# 09 AC Joint LCFS and HR Working Protocol for Parallel Criminal and Disciplinary Investigations

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<td>Governing Body</td>
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<tr>
<td>Name of author/originator</td>
<td>Grant Bezuidenhout, TIAA Ltd</td>
</tr>
<tr>
<td>Owner (director)</td>
<td>Karen McDowell, Chief Finance Officer</td>
</tr>
<tr>
<td>Date of approval</td>
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<tr>
<td>Date of last review</td>
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<td>Next due for review</td>
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### Version Control Sheet

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Equality statement

NHS Guildford and Waverley CCG aims to design and implement services, policies and measures that meet the diverse needs of our service, population and workforce, ensuring that none are placed at a disadvantage over others.

We take into account the Human Rights Act 1998 and promote equal opportunities for all. This document has been assessed to ensure that no employee receives less favourable treatment on the protected characteristics of their age, disability, sex (gender), gender reassignment, sexual orientation, marriage and civil partnership, race, religion or belief, pregnancy and maternity. Members of staff, volunteers or members of the public may request assistance with this policy if they have particular needs. If the member of staff has language difficulties and difficulty in understanding this policy, the use of an interpreter will be considered.

We embrace the four staff pledges in the NHS Constitution. This policy is consistent with these pledges.
Equality Analysis

Equality analysis is a way of considering the effect on different groups protected from discrimination by the Equality Act, such as people of different ages. There are two reasons for this:

- to consider if there are any unintended consequences for some groups
- to consider if the policy will be fully effective for all target groups

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<td>Rachel McEwen, Management Accountant</td>
<td>05/01/2017</td>
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Who is intended to follow this policy? Explain the aim of the policy as applied to this group.
This policy is intended for the Staff at Guildford and Waverley CCG. It sets out the roles and responsibilities and how the LCFS interacts with the HR department in terms of fraud, bribery and corruption. This policy informs staff of the protocol of when a fraud bribery or corruption referral is sent from the HR department.

Who is intended to benefit from this policy? Explain the aim of the policy as applied to this group.
The public who live within Guildford and Waverley will benefit from all Finance policies through sound management of available resources. The policies aim to provide staff with details on how to provide an organisation that legally complies to the NHS Standards of Business Conduct, eliminates fraud, bribery and corruption to frees up resources to provide quality care for the community.
Staff also benefit through clarity of their own responsibilities.

1. Evidence considered
2. Consultation.
3. Promoting equality.
   The Finance policies detail procedures to be followed and relate to all members of the Clinical Commissioning Group and benefit all in the Community. There is reasonable understanding for relevant equality groups.
4. Identifying the adverse impact of policies
a) People from different age groups:
   No Adverse impact.

b) Disabled people:
   For staff with visual impairment, this policy can be read on the CCG’s website which can enlarge the font.

c) Women and men:
   No Adverse impact.

d) Religious people or those with strongly held philosophical beliefs:
   No Adverse impact.

e) Black and minority ethnic (BME) people:
   No Adverse impact.

f) Transgender people:
   No Adverse impact.

g) Lesbians, gay men and bisexual people:
   No Adverse impact.

h) Women who are pregnant or on maternity leave:
   Line Managers should ensure staffs returning from maternity or paternity leave are given time to update themselves on any changes made to these policies.

i) People who are married or in a civil partnership:
   No Adverse impact.

5. Monitoring
   • Complaints to Line Manager or HR
Contents

1. Introduction and Policy Objective.......................................................................................... 7
  1.1. Scope................................................................................................................................. 7
  1.2. Objectives ......................................................................................................................... 7
  1.3. Related legislation, policies and procedures ................................................................. 7
2. Definitions.................................................................................................................................. 8
3. General principles.................................................................................................................... 8
  3.1. Separate Processes............................................................................................................. 8
  3.2. Information Sharing........................................................................................................... 9
4. Roles and responsibilities ...................................................................................................... 9
5. Joint working protocol .......................................................................................................... 10
  5.1. Regular liaison between the LCFS and HR................................................................. 10
  5.2. Fraud referrals.................................................................................................................. 10
  5.3. Investigation.................................................................................................................... 11
  5.4. Information Systems ....................................................................................................... 11
  5.5. Pursuing sanctions.......................................................................................................... 12
6. Monitoring and review of the protocol ............................................................................... 13
7. Appendix 1 Procedural Document Checklist for Approval ................................................. 14
8. Appendix 2 Compliance & Audit Table ............................................................................... 16
1. Introduction and Policy Objective

1.1. Scope

This policy sets out the process of how interaction will be maintained between the Local Counter Fraud Specialist (LCFS) and the Human Resources (HR) department at Guildford and Waverley Clinical Commissioning Group (CCG) when criminal, civil and disciplinary investigations are carried out with regard to an incident, or any episodes of suspected Fraud, Bribery or Corruption, with appropriate flexibility and discretion based on the specific circumstances of each case.

1.2. Objectives

The objectives of this policy are;

- To enable regular interaction and joint working between the LCFS and HR at all times.
- To ensure close and supportive interaction and lawful information sharing between the LCFS and HR where a potential fraud has been highlighted and is investigated.
- To ensure that criminal and disciplinary investigations are carried out effectively and in accordance with relevant legal frameworks.
- To help deter future incidents of fraud by allowing for sanctions to be pursued effectively, where appropriate.
- To ensure that a fair and equitable process is applied to all matters addressed under this policy with the best interests of all parties involved.

1.3. Related legislation, policies and procedures

This policy should be read in conjunction with the following related legislation, CCG Policies and Procedures, and codes of practice and guidance;

Legislation Framework/Core Standards

- The Data Protection Act 1998 (DPA),
- The Police and Criminal Evidence Act 1984 (PACE),
- The Criminal Procedure and Investigations Act 1996 (CPIA),
- The Fraud Act 2007
- The Theft Act 1968
- Identity Documents Act 2010
- Computer Misuse Act 1990
- Bribery Act 2010
- Proceeds of Crime Act 2002
- Human Rights Act
- Employment Rights Act
- Equality & Diversity
- Whistle Blowing
CCG Policies and Procedures

- Fraud Bribery and Corruption Policy
- Whistle Blowing Policy
- Receipt of Hospitality, Gifts and Inducements Policy
- Standards of Business Conduct and Conflicts of Interests Policy
- Prime Financial Policies
- Standing Orders
- Finance Manual
- Disciplinary Policy

Codes of Practice and Guidance;

- Standards of Business Conduct for NHS Staff
- Code of Conduct and Code of Accountability for NHS Boards
- NHS Anti-fraud Manual
- NHS Standard Contract Directions
- The Directions to NHS Bodies on Counter Fraud Measures 2004
- Nolan Principals for Standards in Public Life
- NHS Protect
- Crown Prosecution Service (CPS)
- Information Commissioner’s Office (ICO)
- Advisory, Conciliation and Arbitration Service (Acas)
- NHS Constitution
- NHS Code of Conduct for Managers
- NHS Terms & Conditions Handbook

2. Definitions

3. General principles

A number of general principles should be adhered to when implementing this protocol around segregation of duties and information sharing.

3.1. Separate Processes

The criminal and disciplinary investigations will be conducted separately and by different people. The two investigations have different purposes, standards of proof in determining guilt, and different outcomes, and therefore it is not appropriate for one process to cover both.

Criminal investigations conducted by the LCFS must be in accordance with Police and Criminal Evidence Act (PACE), the Criminal Procedure and Investigation Act (CPIA), and other relevant legislation. The LCFS should not conduct disciplinary investigations as this is an internal procedure that CCG managers are accountable for with support, advice and guidance from HR: if any one person were to act as investigator in both the criminal and disciplinary investigations, this may risk undermining the integrity of both processes in relation to the way evidence has been gathered.
Disciplinary investigations must be carried out by line management and undertaken in accordance with the Acas Code of Practice on Disciplinary and Grievance Procedures and relevant employment law.

The criminal investigation may be given precedence over the disciplinary investigation, if there is a risk of serious prejudice to the former from running the two processes concurrently. However, there may be a compelling public interest in suspending or removing an individual from his/her post before the conclusion of the criminal or disciplinary case; in this situation, a case conference should be held to discuss the circumstances and relevant disclosure issues.

The criminal process may determine the actions and timing of related disciplinary investigations, particularly where there is a risk of prejudice to the criminal case. However there may be other circumstances where sanctions are pursued concurrently, so that the public interest is protected and disciplinary proceedings are heard in a just and timely way. All relevant personnel should be made aware of the parallel proceedings.

3.2. Information Sharing

Information may be shared between the criminal and disciplinary investigation by the LCFS and HR where and when it is lawful and appropriate, subject to the Data Protection Act 1998, and any local HR Policies and contractual agreements.

4. Roles and responsibilities

The HR department will assist the LCFS in any proactive fraud reviews undertaken to detect fraud and prevent potential fraud from entering the organisation’s systems and procedures.

HR will inform the LCFS of any possible system weaknesses that could allow fraud or corruption to occur, including weaknesses discovered as part of any HR investigation that did not warrant the commencement of a fraud investigation.

The LCFS and Director of Governance and Compliance on behalf of the HR Department will meet at agreed regular intervals to discuss liaison requirements and monitor joint working arrangements, ensuring they remain effective and fit for purpose.

LCFS will provide appropriate training, advice and guidance to all CCG staff (including non-employed resources) to ensure appropriate levels of education and awareness of Counter Fraud matters. This training will promote the role and responsibility of line management and all resources. This training will also be a mandatory part of the CCGs inductions process.
LCFS will support and guide HR where parallel investigations are undertaken to ensure that neither are comprised and the right outcomes for both cases can be achieved.

It is the responsibility of all CCG line managers to ensure that the staff they are accountable for are aware of this policy and how it needs to be applied in the workplace.

5. Joint working protocol

5.1. Regular liaison between the LCFS and HR

The LCFS will meet or discuss with HR at regular intervals, as necessary, to exchange updates on the respective investigations and to maintain a flow of information (where lawful and appropriate). These updates may be face to face, by telephone or via email. An accurate record will be made on FIRST regarding the precise nature of the update meetings and of any information that is being shared and the reasons why it is being shared.

The LCFS will work to raise awareness among HR staff of the risk of fraud at the organisation, particularly in areas relating to the HR function (e.g. fraudulent identity, qualifications, expense claims, inappropriate use of CCG property including IT equipment) and the appropriate actions to be taken where there are suspicions or allegations of fraud. Awareness activities will also explain the role of the LCFS and the interaction between the counter fraud function and HR where parallel criminal and disciplinary sanctions are considered.

5.2. Fraud referrals

All referrals received by HR that have an element of suspected fraud, bribery or corruption must be reported immediately to the LCFS and/or Chief Financial Officer.

HR will liaise closely with managers and the LCFS from the outset if an employee is suspected of being involved in fraud and/or corruption.

The LCFS will acknowledge receipt of suspected fraud referrals from HR and arrange to meet with an appropriate HR representative to discuss them.

The LCFS will ensure that the Chief Finance Officer is notified at the earliest opportunity about all referrals/cases and undertake a timely initial review to establish the validity of any allegation.

Initial enquiries by the LCFS following a referral may result in one of the following outcomes and action will be taken in conjunction with HR;

- no case to answer (no evidence of fraud)
- no evidence of fraud found but system weaknesses identified
- no evidence of fraud found but breach of policy or other disciplinary issues identified
• reasonably held suspicion or evidence of suspected fraud identified, requiring criminal investigation.

5.3. Investigation

The LCFS, in consultation with the CCG’s Chief Finance Officer, will investigate allegations in accordance with procedures documented in the *NHS Counter Fraud and Corruption Manual* issued by NHS Protect. The investigation will be conducted in line with the CCG’s Fraud, Bribery and Corruption Policy which outlines the process for criminal investigation by the LCFS; as well as internal HR processes relating to disciplinary investigation.

The criminal process may determine the actions and timing of related disciplinary investigations, particularly where there is a risk of prejudice to the criminal case. However, there may be other circumstances where sanctions are pursued concurrently, so that the public interest is protected and disciplinary proceedings are heard in a just and timely way. All relevant personnel should be made aware of the parallel proceedings.

The circumstances of a case may be such that HR wish to delay disciplinary proceedings until the LCFS has secured all evidence for use in the criminal inquiry.

Where an investigation by the LCFS relates to a case in which a breach of policy and/or procedures may have occurred, HR will meet with the LCFS to discuss the case and receive documents or other materials (where lawful to do so), in order to establish if disciplinary action is required.

The LCFS and HR department will keep each other informed about the progress of their respective investigations, see section 4.1.

Concluding reports will be issued at the closure of any investigation undertaken by the LCFS in accordance with the requirements outlined in the NHS Counter Fraud and Corruption manual. These may include recommendations to strengthen controls in identified areas of weakness in order to prevent future fraud. The recommendations may need to be actioned by HR; the LCFS will therefore ensure they are clearly communicated to the HR, and will check that they are duly implemented.

5.4. Information Systems

All information sharing between the LCFS and HR will be considered on a case by case basis with no routine or blanket information exchange. Whenever information is exchanged it will be recorded on the Fraud Information and Reporting System Toolkit (FIRST) decision log, along with the reasons for sharing and the legal principals considered.

HR may share information obtained during a disciplinary investigation with the LCFS to help further a criminal investigation. The LCFS may normally share with HR information or material which belongs to the CCG or is freely available (e.g. emails).
However, discretion may be required for disclosure of certain types of data or information, or if it originates from a third party, for example:

- transcripts or tapes from an interview under caution (IUC)
- witness statements
- personal data obtained from a third party
- material seized during a search
- other material collected during the course of a criminal investigation.

Where there are overriding public interest issues, such as patient safety concerns, which may require the disclosure of confidential information to HR and/or other bodies, a case conference, comprising the LCFS, Chief Financial Officer and legal input (e.g. from a solicitor), will be held in exceptional circumstances for full consideration.

Issues related to the timing of disclosure of such material will also be discussed – for example where a criminal case is on-going but significant risks to patient safety remain. The case conference may seek advice from the relevant Area Anti-Fraud Specialist (AAFS) as appropriate.

Information sharing will take account of relevant legislation, such as PACE, CPIA and DPA, and guidance from the ICO and NHS Protect (specifically, ‘Parallel criminal and disciplinary investigations – Guidance for Local Counter Fraud Specialists’).

Each piece of information will be considered individually before deciding whether it can be shared between the two parties.

5.5. Pursuing sanctions

In cases of serious Fraud, Bribery and Corruption, parallel sanctions may be applied, these include:

- disciplinary action relating to the status of the employee in the NHS;
- use of civil law to recover lost funds;
- use of criminal law to apply an appropriate criminal penalty upon the individual(s);
- referral of information and evidence to external professional bodies if appropriate.

The full range of possible sanctions will be considered at the earliest opportunity by the LCFS and HR, each case will be discussed with the Chief Financial Officer to determine the most appropriate action and any or all of the options available may be pursued where and when appropriate.

There will be close liaison between the LCFS and HR to ensure that any parallel sanctions are applied effectively and in a coordinated manner and that staff are at all times treated in accordance with CCG values.
Chapter 6 of the *NHS Counter Fraud and Corruption Manual* provides in-depth details of how sanctions can be applied where Fraud, Bribery and Corruption is proven and how redress can be sought. Local action may be taken to recover money by using the administrative procedures of the CCG or civil law.

NHS Protect may apply to the courts to make a restraining order or confiscation order under the Proceeds of Crime Act 2002 (POCA).

The LCFS is responsible for informing HR of any criminal sanctions applied,

HR are responsible for keeping the LCFS updated on the application of disciplinary sanctions.

Action to recover losses will be commenced by LCFS/CCG as soon as practicable after the loss has been identified.

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

Actions arising will be recorded by the LCFS on the FIRST system.

### 6. Monitoring and review of the protocol

This policy will be reviewed annually (and or when required) from its date of issue by the LCFS and the Audit Committee and approved by the CCG Governing Body.

[Names and signatures of the parties to the agreement]
### Appendix 1 Procedural Document Checklist for Approval

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## Procedural document checklist for approval

To be completed and attached to any document which guides practice when submitted to the appropriate committee for consideration and approval.

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Implementing and reviewing the documentation i.e. role of author/originator?

**Director Approval**

On approval, please sign and date it and forward to the chair of the committee/group where it will receive final approval.

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**Committee Approval**

On approval, Chair to sign and date.

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