

# Counter Fraud Policy and Response Plan



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Counter Fraud Policy and Response Plan			
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## Executive Summary

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This policy and response plan forms part of the Partnership Agreement between NHS Scotland Counter Fraud Services (CFS) and NHS Lothian. It is not intended to replace existing policies and response plans, but its content may influence future iterations. This document defaults as a protocol to guide employees and managers on an approach to countering fraud, bribery and corruption that is consistent with the Partnership Agreement and the Counter Fraud Standard. This protocol will be reviewed to align with the period of each Partnership Agreement.

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## 1.0 Introduction

- 1.1 A basic principle of public sector governance is the proper use of public funds. This makes it important for public sector employees to be aware of the risk of, and response to fraud, bribery, corruption and systematic theft (hereafter referred to as 'fraud').
- 1.2 NHS Scotland's policy on countering fraud is detailed in the "Partnership Agreement with Health Boards 2022-25". This Partnership Agreement forms a key element of the Scottish Government's determination to counter fraud against NHS Scotland. In January 2008, the Scottish Government published its "Strategy to Counter NHS Fraud in Scotland" followed in June 2015, by "Protecting Public Resources in Scotland – A Strategic Approach to Fighting Fraud and Error". This policy and response plan follows the principles and guidance set out in those documents and is consistent with the Counter Fraud Standard; a set of assessed components that encourages Boards to assess; measure and manage its fraud risks in addition to finding and investigating fraud that has occurred.
- 1.3 In November 2023, the Scottish Government published its NHS Scotland Counter Fraud Strategy 2023-26. As the Partnership Agreement and Counter Fraud Strategy are closely linked and cross reference each other, a proposal to extend the current Partnership Agreement for 12 months, to March 2026 was tabled and agreed at the Chief Executive meeting on the 7<sup>th</sup> October 2024.
- 1.4 The NHS Scotland Counter Fraud Services (CFS) was created specifically to assist all Boards in their efforts to tackle fraud and this document sets out the Board's approach to manage fraud proactively. The Board recognises that every pound of fraud prevented or recovered means increased funding for patient care. The Board has procedures in place that reduce the likelihood of fraud occurring. These include Standing Orders, Standing Financial Instructions (SFI), operational procedures, a system of internal control and risk assessment. The Board engages CFS to promote a fraud awareness culture through a range of products and services. The Partnership Agreement 2022-25 with CFS outlines what must happen in the event of a fraud or other irregularity being discovered. The Partnership Agreement includes reference to the Board and CFS proactively detecting and investigating fraud and assessing the risk of fraud.
- 1.5 This document provides detailed direction and help to staff dealing with circumstances suspected to be fraud. In these circumstances the Board has immediate discussions to agree with CFS how to progress each case appropriately. CFS will always consider taking forward relevant cases that have the potential for criminal prosecution. Staff need to be aware of this and of their responsibilities when a criminal prosecution is not appropriate.

## 2.0 Public Service Values

2.1 High standards of corporate and personal conduct based on the recognition that patients come first, have been a requirement throughout the NHS since its inception. The Code of Conduct published by the Scottish Government Health Department (SGHSCD) in April 1994 (revised 2004) set out the following public service values:

**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.

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

## 3.0 The Board's Policy

3.1 The Board is committed to the NHS Scotland Counter Fraud Strategy and to the public service values outlined above.

3.2 The Board will maintain an honest and open culture and encourages anyone having suspicions of fraud to report this immediately. All staff can be confident 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.

## 4.0 Roles and Responsibilities

### 4.1 Chief Executive

4.1.1 As the Accountable Officer, the Chief Executive has the responsibility for countering fraud in its broadest terms. Accountable Officers are required to have adequate arrangements in place for the deterrence, prevention and detection of fraud. In line with central guidance, these arrangements should encompass robust systems of preventative and detective controls to reduce the risk of fraud and contribute to the promotion of an anti-fraud culture. The Accountable Officer should also use CFS to assist in the investigation of actual, and alleged, losses involving patients' funds where evidence exists of systematic fraud.

- 4.1.2 In October 2008 the SGHSCD issued circular CEL 44 (2008) noting that all frauds must be reported to CFS regardless of who the suspect or victim is, whether it is prosecuted criminally, civil action or by discipline, or whether the fraud was actual or attempted. The Accountable Officer must ensure that systems are put in place to notify CFS of all reports of fraud, so that complete records of fraud against NHS Scotland are available.

## **4.2 Director of Finance**

- 4.2.1 The Chief Executive may delegate the day-to-day responsibility for the management of individual cases to the Board's Director of Finance. In the case of general theft, the Director of Finance will report the suspected crime directly to Police Scotland to carry out the appropriate investigations. In cases of systematic thefts, the Director of Finance will report to CFS, who will advise if police involvement is necessary.
- 4.2.2 From 1<sup>st</sup> April 2022, this Board has adopted the 12 components of the Counter Fraud Standard, which designates the Director of Finance to manage the risk of fraud, bribery and corruption.

## **4.3 Fraud Liaison Officer**

- 4.3.1 This Board has nominated a senior officer as the Fraud Liaison Officer (FLO). The FLO will liaise with CFS on all matters relating to fraud and will cooperate with reactive and proactive enquiries. The FLO has a duty to report, on behalf of the Board, all allegations of fraud and receives reports from CFS. The FLO and CFS agree whether the allegation will be taken forward for potential criminal prosecution, and/or as a disciplinary or civil case. See SGHSCD circular CEL 03 (2008) for roles and responsibilities of Counter Fraud Champions and Fraud Liaison Officers. Further guidance on how these roles support the Counter Fraud Standard will be available from April 2022.
- 4.3.2 Where CFS is undertaking a case on behalf of the Board no further action shall be taken by the Director of Finance, the Fraud Liaison Officer, the Director of Human Resources and Organisational Development, or any other Board officer without consultation with CFS. This is necessary to maintain the integrity of the investigation.

## **4.4 Counter Fraud Champion**

- 4.4.1 The Scottish Government's Strategy asks the Board to appoint an executive or Non-Executive Director to be the Counter Fraud Champion (CFC) to help with the process of promoting a counter fraud message within the organisation. This role is vital in representing counter fraud issues at Board level and communicating to staff to promote an anti-fraud culture.
- 4.4.2 At NHS Lothian the Director of Finance performs the duties of the Counter Fraud Champion.

## **4.5 Counter Fraud Services**

- 4.5.1 CFS will work with the Board to promote an anti-fraud culture among: staff; patients; FHS practitioners; contractors; suppliers; and the wider public who will come to regard fraud against NHS Scotland as unacceptable. CFS delivers prevention, detection and investigation services and provides support and facilitation for the FLO and the CFC in their work.
- 4.5.2 Where CFS investigates a fraud, a final report outlining the case will be issued to the Board. Where appropriate, a range of recommended civil or disciplinary actions and an estimate of potential civil recoveries will be included in the report. CFS may include counter fraud recommendations in reports to mitigate the risk of re-occurrence. The Board has a responsibility to provide a management response to CFS recommendations. For criminal prosecutions, CFS send a Standard Prosecution Report directly to the Procurator Fiscal on behalf of the Board.
- 4.5.3 Where there is disagreement between the Board and CFS over the application of the full range of sanctions that may be recommended by CFS, then:
- the Board's Accountable Officer must submit his/her concerns to the Director of Health Finance and Governance, Scottish Government, copying the letter to the CFS Head of Service
  - CFS must submit its concerns to the Board's Accountable Officer, copying the letter to the Director of Health Finance and Governance, Scottish Government
- 4.5.4 The CFS Head of Service has a professional responsibility to the Accountable Officer of the Board for the conduct of investigations on their behalf and the provision of advice. Information concerning work carried out on behalf of a client body may only be disclosed out-with the confines of CFS with the express permission of the Board, except for disclosure to the SGHSCD, other UK health counter fraud bodies where relevant, the appointed auditor, the Crown Office and Procurator Fiscal Service or the police. The CFS Head of Service also has the right of access, in exceptional cases (those involving allegations against the most senior staff in the Board), to the SGHSCD Finance Director.

## **4.6 Human Resources working with Counter Fraud Services**

- 4.6.1 The Director of People and Culture 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.

## **4.7 Employees Responsibility**

- 4.7.1 All staff have a duty to protect the assets of the Board, as detailed in the Standing Financial Instructions, which include: information, physical property and cash. The Board will

maintain an honest and open culture and wishes to encourage anyone having suspicions of fraud, embezzlement, bribery, corruption, or systematic theft to report them without delay.

4.7.2 The reporting routes for NHS staff should be clearly defined in staff induction documentation and awareness raised for existing staff. The reporting routes should be detailed in patient information leaflets, contract documentation and CFS publicity material. In all such internal and external documentation, it should be noted that time may be of the utmost importance to prevent further loss to the Board.

#### 4.8 National Fraud Initiative (NFI)

4.8.1 The National Fraud Initiative (NFI) in Scotland is a counter-fraud exercise led by Audit Scotland, assisted by the Cabinet Office. Data analytics compare information about individuals held by different public bodies, on different financial systems and databases to identify circumstances (matches) that might suggest the existence of fraud or error.

4.8.2 The NFI allows:

- public bodies to investigate these matches and, if fraud or error has taken place, to stop payments and attempt to recover the amounts involved.
- auditors to assess the arrangements that the bodies have put in place to prevent and detect fraud.

4.8.3 NHS Lothian participates in this exercise which is carried out every two years.

## 5.0 Public Interest Disclosure Act 1998

5.1 The Public Interest Disclosure Act (PIDA) 1998, is the law that protects whistle-blowers from **negative treatment or unfair dismissal**. It is part of the Employment Rights Act 1996 (ERA). PIDA makes it unlawful to subject a worker to negative treatment or to dismiss them because they have raised a whistleblowing concern.

5.2 The Board will maintain an honest and open culture and encourages anyone with suspicions of theft, fraud, corruption or embezzlement to report them without delay. The Board is required to provide a secure environment and method of communication for staff, practitioners, suppliers and patients to report suspected fraud in compliance with the Public Interest Disclosure Act 1998. This will be consistent with the Whistleblowing Policy (see NHS 'Once for Scotland' website) and should be clearly outlined to staff through intranet guidance and staff leaflets.



- 5.3 The Independent National Whistleblowing Officer (INWO) provides confidential whistleblowing standards and new guidance to NHS staff. The phone line, 0800 008 6112, is open to anyone who wish to raise any concerns about practices in NHS Scotland. Further information and guidance is available from the INWO website.

## 6.0 Regulation of Investigatory Powers (Scotland) Act 2000

- 6.1 The use of covert surveillance or covert human intelligence sources by public authorities in Scotland is strictly controlled by the provisions of RIP(S)A. The use of these investigatory powers is detailed at section 6.6 et seq, of the Partnership Agreement. Where appropriate CFS will authorise and conduct directed surveillance and the use of CHIS on behalf of the Board.
- 6.2 Where the Board is considering the use of directed surveillance or the use of CHIS in cases which do not involve fraud which fall within the remit of CFS, in connection with public safety or the prevention of disorder, or for the purposes of protecting public health, they should contact the appropriate public body as outlined in HDL (2003) 30. This will normally be Police Scotland. However, CFS may be able to assist the Board in certain instances, for example where there has been a theft of property.
- 6.3 CFS can provide further guidance for Boards on how to ensure directed surveillance is not undertaken by their staff inadvertently, leaving the Board potentially open to legal challenge or allegations in relation to the infringement of Article 8 of the Human Rights Act 1998 – The right to respect for private and family life and/or breach of the 1998 Act. The Board should also consult their Data Protection Officer to ensure that all surveillance (including CCTV and monitoring of employee emails/internet usage) and other activities is carried out in accordance with the 1998 Act and all relevant Codes of Practice.
- 6.4 All investigations undertaken by CFS investigators will be conducted in compliance with relevant extant legislation, relevant Regulations and Codes of Practice, recognising the considerations of the Human Rights Act 1998.

## 7.0 Scottish Government Health & Social Care Department Guidance

- 7.1 The SGHSCD guidance on financial control procedures when criminal offences are suspected is provided within the Partnership Agreement, specifically:
- a) in cases of theft, where there are reasonable grounds for thinking that an item of property, including cash, has been stolen, the Director of Finance should report the details to the police.
  - b) in cases of suspected fraud, embezzlement, bribery and other financial irregularities, preliminary enquiries should be carried out with as much speed as possible. Restitution of funds or property is not a reason for withholding

information or failing to report the facts. At the very early stages of a case of suspected fraud, which includes fraud involving patient funds, CFS must be contacted to discuss whether the case will be taken forward criminally and/or through discipline and/or civil recovery. Where a fraud may also affect other NHS bodies, the Board should inform the Scottish Government so that this information may be disseminated appropriately.

- c) where the nature of the alleged offence or the position of the person involved could give rise to national or local publicity, the SGHSCD should also be informed.
- d) where preliminary investigations suggest that prima facie grounds exist for believing that a criminal offence has been committed, the Board and CFS must decide if criminal prosecution would be an appropriate route. The norm is that all such cases should be considered for reporting to the procurator fiscal, however where both the Board and CFS agree it is not in the public interest, generally on the grounds of low value, the case may be taken forward through discipline and/or civil recovery routes.
- e) the Board and CFS must be prepared to justify all such decisions to the appointed auditor. Breach of trust must be taken into account in these considerations, i.e. being of low value does not automatically preclude a case from being notified to the procurator fiscal. Where there is doubt as to whether a prima facie case for prosecution exists, CFS will contact the Crown Office and Procurator Fiscal Service to obtain advice.
- f) in any event, CFS should be contacted before any overt action is taken which may alert the suspect and precipitate the destruction or removal of evidence or the dissipation of assets. This includes taking action to stop a loss or tighten controls.
- g) where Boards and CFS are undertaking pro-active exercises in areas of known fraud risk, officers and directors must provide assistance and such data as is required to ensure the success of these operations.

## 8.0 The Reporting Framework – CEL 18 (2009)

- 8.1 CEL 44 (2008) updated the required reporting standards in a revised SFR 18 (Scottish Financial Return). The SFR 18 forms part of the Board's annual accounts and the change was to improve reporting of all relevant items. The purpose of enhanced recording and reporting will be to enable the Scottish Government and NHS bodies to better understand the scale and types of identified NHS frauds, the categories within which these fall, the amounts involved, where applicable (since not all frauds/attempted frauds reported will have an attributable cost), and recoveries made.

## 9.0 Reporting Suspicious

- 9.1 A list of the different types of offences that can occur can be found at Appendix 4 of the Partnership Agreement.

9.2 Allegations of fraud, embezzlement, bribery, corruption or systematic theft may come from a number of sources and may be received anonymously. The subject of the allegation may be in respect of any person or corporate body, including employees, primary care contractors, suppliers and patients.

9.3 Where the subject of the suspected fraud, embezzlement, bribery, corruption or systematic theft is not an NHS colleague, then the suspicions should be reported in writing to the Head of Department. It is important to capture all information that is readily available regarding the suspect(s) for reporting to the FLO. The Head of Department and the FLO will then discuss and agree whether a report to CFS and/or Police Scotland is appropriate.

#### **9.4 Suspected Employee Fraud**

9.4.1 Where an NHS employee is suspected, in the first instance any suspicions should be reported to the relevant Head of Department. If the suspected incident involves the Head of Department, then suspicions should be reported in writing to a more senior officer or directly to the Board's Fraud Liaison Officer (FLO). In the absence of the FLO, the Board must have an appointed Deputy.

9.4.2 For incidents involving Executive Directors of the Board, the FLO should contact the Chair of the Board or the Chair of the Audit and Risk Committee. It is important to act quickly when suspicions are reported in order to minimise further losses to the Board. This also allows action to be taken to secure evidence required for any future proceedings, criminal or disciplinary.

9.4.3 Contact should then be made with the Director of Human Resources and Organisational Development immediately, before proceeding with any internal investigation. Where the suspicions relate to a potential criminal offence, the FLO will formally refer matters on a CFS1 form to CFS, who will consider the referral and determine if a criminal investigation is justified. CFS, the FLO and the Director of Human Resources and Organisational Development should then discuss and determine whether/when to initiate suspension of the employee pending an enquiry.

#### **9.5 In All Cases**

9.5.1 The FLO should also consider the need to inform the Board, the Counter Fraud Champion (CFC), the Director of Finance, the Chief Internal Auditor or External Audit of the reported incident. In doing so, cognisance should be taken of the following guidance:

- a) In all cases where fraud, embezzlement, bribery, corruption or systematic thefts are suspected, it is essential that there is the earliest possible consultation with Counter Fraud Services, who should be contacted immediately by the FLO. Counter Fraud Services will then advise if Police Scotland need also be involved.

- b) In any event, Counter Fraud Services should be contacted before any overt action is taken which may alert suspects and precipitate the destruction or removal of evidence. This includes taking action to stop a loss or tighten controls.
- c) Inform and consult the Director of Finance and the Chief Executive at the first opportunity in all cases where the loss may exceed the delegated limit (or such lower limit as the Board may determine) or where the incident may lead to adverse publicity.

9.5.2 All such contact should be formally recorded in the Log. It should be noted that staff who wish to raise concerns about unprofessional behaviour or decisions (where fraud, embezzlement, bribery, corruption or systematic theft are not suspected) should do so by following the guidance contained in the Board's Whistleblowing Policy. Following investigation of the complaint, if improper practices or criminal offences are suspected, the matter should be referred by the investigating officer, to the Fraud Liaison Officer.

## 10.0 CFS Protocols

- 10.1 The decision on whether a referral is taken on by CFS as a criminal investigation is normally taken following correspondence between the FLO and CFS and usually involves an initial meeting to consider the available evidence. If the referral involves an employee of the Board, then HR involvement in any initial meeting is crucial to avoid any conflict with ongoing or future disciplinary processes. The officer leading the criminal investigation will be a Counter Fraud Specialist from CFS. The circumstances of each case will dictate who will be involved and when.
- 10.2 On any matters related to the investigation of fraud, and acting on the Director of Finance's behalf and as stated in the Board's SFIs, Counter Fraud Services staff are entitled without necessarily giving prior notice to require and receive:
- a) Access to all records, documents and correspondence relating to any financial or other relevant transactions, including documents of a confidential nature (in which case they shall have a duty to safeguard that confidentiality), within the confines of the data protection act.
  - b) Access at all reasonable times to any land, premises or employees of the Board.
  - c) The production or identification by any employee of any cash, stores or other property of the Board under an employee's control; and
  - d) Explanations concerning any matter under investigation.
- 10.3 If the allegation concerns a director, CFS will undertake all consultation with the Chair of the Audit and Risk Committee/ Chair of the Board, the FLO, the Director of Human Resources and Organisational Development and Chief Internal Auditor, as appropriate.

- 10.4 Where the allegation does not refer to a Board employee, CFS will undertake all consultation with the FLO and Director of Finance. The procedures followed by CFS in all investigations are detailed in the Partnership Agreement.
- 10.5 Disciplinary policies and procedures for NHS Scotland employees (members of the medical and dental professions excepted) follow a common structure. In accordance with the Once for Scotland policy, where the actions of an employee are such that it is considered to be appropriate to invoke the disciplinary procedure, no disciplinary action will be considered until a thorough investigation has been carried out, and a manager will be identified to undertake the investigation.
- 10.6 If initial CFS enquiries determined that there are to be no criminal proceedings, then it may be more appropriate for the Board to carry out an internal investigation. In this instance, all information/evidence gathered by CFS will be passed to the Board. The internal investigation will then be taken forward in line with employment law and the Once for Scotland policies, as appropriate.
- 10.7 Any formal internal investigation to determine and report upon the facts, should establish:
- the extent and scope of any potential loss;
  - if any disciplinary action is required;
  - the criminal or non-criminal nature of the offence (if not yet established);
  - what can be done to recover losses; and
  - what may need to be done to improve internal controls to prevent any recurrence?
- 10.8 Where the report confirms a criminal act but notification to Police Scotland has not yet been made, then a formal report should be submitted to them at that point.
- 10.9 This report should form the basis of any internal disciplinary action taken. The conduct of internal disciplinary action will be assigned to the Director of Human Resources and Organisational Development or delegated officer within the Directorate, who shall gather such evidence as necessary.
- 10.10 Where recovery of a loss to the Board is likely to require a civil action, arising from any act (criminal or non-criminal), it will be necessary to contact the Central Legal Office (CLO), which provides legal advice and services to NHS Scotland

## 11.0 Police Scotland

- 11.1 It is expected that, wherever a criminal act is suspected, but which falls out-with the remit of Counter Fraud Services, the matter will be notified to Police Scotland as follows:

- i. During normal working hours, it will be the decision of the Director of Finance as to the stage that the police are contacted. If the Director of Finance is unavailable, this decision will be delegated to the Fraud Liaison Officer.
  - ii. Out with normal working hours, the manager on duty in the area where a criminal act is suspected should always report the matter to the Senior Manager and Executive Director On-Call. It will be the decision of the Executive Director On-Call as to the stage that the police are contacted. In any case the manager on duty in the area where a criminal act is suspected should always report the matter to the Director of Finance and the FLO at the earliest possible time.
- 11.2 The FLO and the investigating manager should informally notify Police Scotland of potential criminal acts, to seek advice on the handling of each investigation at an early stage in the investigation.
- 11.3 Formal notification of a suspected criminal act will normally follow completion of the investigating manager's report and formal disciplinary action. It is important that the internal report is carried out in a timely manner to avoid delaying the police investigation.

## 12.0 Suspension of Employee(s)

- 12.1 Following consultation between the Board and CFS, it may be appropriate to limit the investigation to disciplinary/civil recovery action. If so, the following outline the actions to be followed:
- a) Where the allegation refers to an employee, the Director of Finance will seek advice from the Director of Human Resources and Organisational Development on suspension or redeployment.
  - b) Where the allegation is in respect of a director, the Chair of the Audit and Risk Committee/ Chair of the Board will involve the Director of Human Resources and Organisational Development, where appropriate, in making any decision regarding suspension.
- 12.2 Where consultation between the Board and CFS conclude that a criminal investigation is required, the FLO/ Director of Finance / Director of Human Resources and Organisational Development should consider whether/when to suspend the employee(s) subject to the investigation, pending the outcome. This should be carried out in line with the Once for Scotland policies.
- 12.3 Suspension is not a disciplinary sanction but a neutral act and would normally only be considered where the behaviour alleged would, if proved, constitute an offence of a serious nature and time is needed to investigate the circumstances further. When taking action to suspend an employee it is important to communicate the reason for taking the action, against which there is no appeal.

- 12.4 The employee 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.
- 12.5 Where there is to be an investigation by CFS, the Board must consult CFS prior to suspending any member of staff. CFS will not take any part in the decision as to whether or not suspension is appropriate, but instead would seek to be in a position to make recommendations about the timing of the suspension in the interest of securing the integrity of any potential evidence.
- 12.6 For example, if the alleged offence concerned conduct within NHS premises, such as payroll fraud or improper application of tendering regulations, and the decision to suspend had been taken, CFS may recommend that the individual be escorted from the premises in order that evidence could not be tampered with. If, however, the allegation concerned the theft of property, CFS may recommend that it is more appropriate to reasonably delay the suspension in order to enable the searching (under warrant) of the home or premises of the individual concerned.

## 13.0 Gathering Evidence

- 13.1 This policy cannot cover all the complexities of gathering evidence. Each case must be progressed based on the individual circumstances of the case, taking professional advice as necessary (including advice from CLO where deemed appropriate). Where CFS decides not to pursue a criminal investigation, for whatever reason, the recommended next steps may involve an internal, Board-level investigation. In these circumstances it is important that the gathering of evidence is carried out in a methodical and consistent way.
- 13.2 Depending on the situation, and after discussion and agreement between the Board and CFS, there may be occasions when CFS can undertake preliminary enquiries on behalf of the Board.
- 13.3 The Board/CFS Partnership Agreement outlines where it may be possible to utilise some of the work carried out by CFS in a criminal case 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. Subject to those caveats, the work done by CFS, particularly with respect to witness and suspect interviews, could reduce the work required by the Board's investigation team.
- 13.4 At all stages of the investigation, any discussions or interviews should be documented and, where feasible, agreed with the interviewee.

- 13.5 If a witness to the event is prepared to give a written statement, it is best practice for an experienced member of staff, appointed by the HR Directorate, to take a chronological record using the witness's own words. The witness should sign the statement only if satisfied that it is a true record of his or her own words. In circumstances where the witness is the Fraud Liaison Officer then the "role" of Fraud Liaison Officer moves to the next most senior member of staff.
- 13.6 Physical evidence should be identified and gathered together (impounded) in a secure place at the earliest opportunity. An inventory should be drawn up by the investigating officer and held with the evidence. Wherever possible, replacement or new document etc. should be put into use to prevent access to the evidence. If evidence consists of several items, for example a number of documents, each one should be tagged with a reference number corresponding to the written record. Care with evidence gathering is important, as that which may initially be treated as a discipline case could become a criminal prosecution at a later stage.
- 13.7 Where evidence is believed to be held on: individual computers; laptops; smartphones; tablets; camera systems; or on a business network, CFS will provide advice in the first instance to the Board on developing a plan to secure digital evidence. Great care should be taken where there is a need to secure copies of files, emails and logs, and strict procedures must be followed to allow this type of evidence to be admissible in prosecution proceedings. Accessing this information prior to securing a forensic image may be considered by a Court as tampering with the evidence and it may be ruled inadmissible.

## 14.0 Disciplinary Procedures

14.1 The Board investigation should cease when:

- there is sufficient evidence for a case to answer and defences have been investigated,
- the Investigating Manager considers that reasonable steps have been taken to obtain information in regards to the allegation,
- if sufficient evidence hasn't been obtained, they may wish to seek a more wide-ranging investigation.

14.2 In any disciplinary action taken by the Board toward an employee, the Once for Scotland disciplinary procedures have to be followed.

14.3 This may involve the investigation manager recommending a disciplinary hearing to consider the facts, consideration of the results of the investigation and making further recommendations on appropriate action to the employee's line manager. Where the fraud involves a regulated health professional, the Board should also consider referring the matter to the relevant professional body.



- 14.4 In every case where it is proposed to proceed to a disciplinary hearing whilst there is a criminal case pending based on the same or related allegations, the advice of Central Legal Office/external equivalent is to be sought before proceeding. There is no requirement under the criminal law for staff to be retained on full pay pending the criminal case. However, it may be considered inappropriate to proceed with a disciplinary hearing if the individual concerned declines to attend. In every such case, CLO will advise on whether the evidence is in itself sufficiently strong and compelling to justify dismissal in absentia, if necessary. In practice, such action will be the exception rather than the rule.

## 15.0 The law and its Remedies

- 15.1 Criminal Law may impose sanctions on the suspect for causing loss, while civil law may assist the Board to recover its loss.
- 15.2 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.
- 15.3 Where recovering a loss is likely to require a civil action, it will be necessary to seek legal advice from the Central Legal Office (CLO). Such action should only be progressed under the authority of the Director of Finance.
- 15.4 The following is a brief description of the most common civil law remedies:
- a) 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.
  - b) Interest**

The pursuer may be entitled to interest on the amount lost, and there are claims for interest under court rules and statute.
  - c) 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, they are entitled to be put back into the position that they 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.
- 15.4.4 The Board/CFS Partnership Agreement outlines where it may be possible to utilise some of the work carried out by CFS in a criminal case for civil recovery proceedings. This will always be subject to approval from the relevant Procurator Fiscal and may require advice from CLO.

- 15.4.5 In Civil Law, the method of concealment (in the case of fraud) is unlikely to be a key factor in the value of compensation or the drafting of the statement of claim.
- 15.4.6 Criminal Law allows for the restraint (i.e. freezing) and confiscation of the proceeds of crime, following conviction. CFS, in conjunction with the police and Crown Office and Procurator Fiscal Service, will always press to have the full effect of the Proceeds of Crime Act 2002 applied whenever it is appropriate. Additionally, a Compensation Order in favour of the victim can form part of the sentencing by a Sherriff but cannot be instigated by CFS, nor prompted by the Procurator Fiscal.

## 16.0 Disclosure of Loss

- 16.1 The FLO will maintain a log of all reported suspicions of fraud, embezzlement, bribery, corruption or systematic theft. The log will document any losses that may have occurred, all actions taken and conclusions reached. If the suspicion appears groundless, a record of the incident will be retained in the Incident Log only. If a suspicion appears grounded and further action is required, the incident will also be recorded in the Fraud Log.
- 16.2 The Director of Finance shall notify the Audit and Risk Committee of all frauds discovered and also of all losses arising from any criminal or suspected offences. The Audit and Risk Committee will review the incidents and fraud logs at least once each year and will report any significant matters to the Board. This log will be utilised to help populate the SFR 18.2 form which forms part of the Board's annual accounts.
- 16.3 Guidance on the referring of losses and special payments is provided in CEL 10 (2010) – Revised Scottish Financial Return (SFR) 18: Enhanced Reporting of NHS Frauds and Attempted Frauds. This includes reporting of all forms of irregular activity which suggest that fraud may have taken place, even if the evidence is not of a standard that can be used for prosecution. Scottish Financial Return (SFR) 18.0 on Losses and Compensation Payments is submitted annually to the Audit and Risk Committee as part of the Annual Accounts. SFR 18 should include all losses, with appropriate description, aligned within the standard categories specified by the SGHSCD. External Audit should be notified of any loss as part of their statutory duties.
- 16.4 Management must take account of the permitted limits on writing off losses for “Category 2 Boards”, as outlined in Annex C of CEL 10 (2010).
- 16.5 Guidance on losses and special payments is provided in Circulars 1985(GEN)17 and HDL (2005) 05. The delegated limits for approving the writing off of losses and special payments are detailed in the Board's Standing Financial Instructions.

- 16.6 It will be important for the Director of Finance to consider actions to be taken to minimise the risk of a potential repeat of the incident. The actions will include a review of lessons learnt and completion of a risk assessment by internal audit or consideration of a Fraud Risk Assessment by CFS. Any lessons learned should be disseminated to the Service through the internal audit network or by using the CFS bulletins.

## 17.0 Media Coverage

- 17.1 **Under no circumstances** should a member of staff speak or write to representatives of the press, TV or radio, about a suspected fraud without the express authority of the Chief Executive.
- 17.2 The Officer in Charge of the criminal case, whether from CFS or Police Scotland, will be responsible for collaborating with the Board's communications department in relation to preparing and agreeing the timing and content of an appropriate press release.

## 18.0 Contacts

### **Fraud Liaison Officer**

07964 255318

[jim.old@nhs.scot](mailto:jim.old@nhs.scot)

### **Deputy Fraud Liaison Officer**

07977 246770

[olga.notman@nhs.scot](mailto:olga.notman@nhs.scot)

### **Counter Fraud Hotline**

08000 15 16 28 (powered by Crimestoppers)

<https://crimestoppers-uk.org>

### **Counter Fraud Services**

01506 705200 (general enquiries)

<https://forms.theiline.co.uk/nhs-scotland-counter-fraud-services>

### **Independent National Whistleblowing Officer**

0800 008 6112

<https://inwo.spsso.org.uk>