

**COUNTER FRAUD, BRIBERY AND
CORRUPTION
POLICY AND RESPONSE PLAN**

**SWANSEA BAY UNIVERSITY
HEALTH BOARD**

The policy has been screened for relevance to equality. No potential negative impact has been identified so a full equality impact assessment is not required.

Revised November 2019

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1. INTRODUCTION

- 1.1 One of the basic principles of public sector organisations is the proper use of public funds. It is therefore important that all those who work in the public sector are aware of the risk of, and measures put in place to deal with, fraud, bribery and corruption, and other illegal acts involving dishonesty or loss. For simplicity all such offences are hereafter referred to as “economic crime”, except where the context indicates otherwise. This document sets out the Health Board’s policy and response plan for detected or suspected economic crime.
- 1.2 Swansea Bay University Health Board already has procedures in place that reduce the likelihood of economic crime occurring. These include Standing Orders, Standing Financial Instructions, documented procedures and systems of internal control and risk assessment. In addition the Health Board takes steps to ensure that a risk awareness culture (which includes the risk of economic crime) exists within the organisation.
- 1.3 This document is intended to provide direction and help to staff, Officers and Directors who identify and/or find themselves having to deal with suspected cases of economic crime. It gives a framework for a response, and advice and information on various aspects and implications of an investigation. This document is not intended to provide direction on prevention of economic crime.
- 1.4 This Policy should be read in conjunction with the Health Board’s Disciplinary Policy, Bribery Policy, Standards of Business Conduct and Procedure for NHS Staff to Raise Concerns.

2. THE HEALTH BOARD POLICY

- 2.1 Swansea Bay University Health Board (the Health Board) **will not tolerate** economic crime and is committed to reducing levels to an absolute minimum, and keeping them there, thus freeing up valuable resources to be used in the provision of high quality patient care.
- 2.2 The Health Board is committed to the rigorous investigation of all reported cases of potential economic crime. Where criminality is proven, the appropriate disciplinary, regulatory, civil and/or criminal sanctions will be pursued, and where possible, recovery of any losses to the organisation or wider NHS will be sought.
- 2.3 The organisation wishes to encourage anyone having reasonable suspicions that an economic crime may have been committed to report them. It is the Health Board’s policy, which will be rigorously enforced, that no employee will suffer in any way as a result of reporting such concerns.
- 2.4 Similarly, this Health Board has a duty to protect individuals and the organisation from false, malicious or vexatious expressions of concern. Action may be taken against anyone who is found to have:
 - Made allegations falsely or maliciously
 - Externally disclosed information before or instead of using the appropriate established internal procedures.

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- Victimised employees, or deterred them from raising a concern.
- 2.5 All genuine suspicions or concerns regarding economic crime can be reported in the following ways:
- To the Health Board Local Counter Fraud Specialist (LCFS)
 - To the Director of Finance
 - Via the NHS Fraud and Corruption Reporting Line on **0800 028 40 60**
 - Using the online reporting tool at <https://cfa.nhs.uk/reportfraud>
- 2.6 This policy is supported and endorsed by the Swansea Bay University Health Board Audit Committee, and the Board.

3. PUBLIC SERVICE VALUES

- 3.1 Public service values must be at the heart of the National Health Service in Wales. High standards of corporate and personal conduct based on a recognition that patients come first has been a requirement throughout the NHS since its inception. Moreover, since the NHS is publicly funded, it must be accountable to the Welsh Government for the services it provides and for the efficient, effective and economical use of taxpayers' money.
- 3.2 The Codes of Conduct and Accountability for NHS Boards have been substantially rewritten since they were first issued to the Service, and have been restructured to separately show the conduct and accountability aspects. The Codes reinforce the seven principles of public life (The Nolan Principles) and focus on the three crucial public service values which underpin the work of the Health Service – accountability, probity and openness.
- 3.2.1 **Accountability**
Everything done by those who work in the NHS in Wales must be able to stand the tests of Welsh Government scrutiny, public judgments on propriety and professional codes of conduct.
- 3.2.2 **Probity**
There should be an absolute standard of honesty in dealing with the assets of the NHS in Wales; integrity should be the hallmark of all personal conduct in decisions affecting patients, staff and suppliers, and in the use of information acquired in the course of NHS duties.
- 3.2.3 **Openness**
The organisation's activities should be sufficiently public and transparent to promote confidence between the organisation and its patients, staff and the public.
- 3.3 All those who work in the organisation should be aware of, and act in accordance with, these values.

4. WHAT IS FRAUD?

- 4.1 Fraud is a criminal activity, defined as:
“Abuse of position, or false representation, or prejudicing someone’s rights for personal gain”

Serious Fraud Office (SFO)

Put simply, fraud is an act of dishonesty with the intention of making a gain, or causing a loss to another party.

- 4.2 The Fraud Act 2006 created a general offence of fraud, which can primarily be committed in three ways:

- a) Fraud by false representation (s.2) – being untruthful about something using any means, e.g. by words or actions
- b) Fraud by failing to disclose information (s.3) – not disclosing/saying something when you have a legal duty to do so
- c) Fraud by abuse of a position of trust (s.4) – abusing a position where there is an expectation to safeguard the financial interests of another person or organisation.

- 4.3 It is no longer necessary to prove that a person has been deceived; the focus is now on the dishonest behaviour of the subject. It should be noted that all of the above offences occur where the act or omission is committed **dishonestly** and with **intent** to cause gain or loss. The gain or loss does not have to succeed, so long as the intent is there.

- 4.4 Further sections within the Act cover offences that relate to the possession, making or supplying of articles for use in fraud, and dishonestly obtaining services.

- 4.5 Some examples of areas where economic crime can and does occur within NHS Wales have been included at **Appendix 1**.

5. WHAT IS BRIBERY?

- 5.1 The Bribery Act 2010 came into force on 1st July 2011, reforming the criminal law of bribery and making it easier to tackle the offence in both the public and private sectors.
- 5.2 Broadly, the Act defines bribery as offering, giving, requesting or receiving a financial or other advantage in connection with the improper performance of a position of trust, or a function that is expected to be performed impartially or in good faith.
- 5.3 The Act creates two general bribery offences, concerned with bribing another person or giving bribes (the active offence), and being bribed or receiving bribes (the passive offence).

Bribing another Person (s.1) – To offer, promise or give a financial or other advantage to another person either intending to induce or reward improper performance, or knowing or believing acceptance of the advantage constitutes improper performance.

Being Bribed (s.2) – To request, agree to receive or accept a financial or other advantage:

- Intending that as a consequence, a function or activity should be performed improperly

Or

- Where the request, agreement, or acceptance itself would constitute improper performance of a function or activity

Or

- As a reward for the improper performance of a function or activity which has already occurred

- 5.4 In addition to the above, the Act also introduces a new offence of failure on the part of a commercial organisation to prevent bribery being committed in connection with its business. An organisation will have a full defence against this offence if it can show that, despite a particular case of bribery, it nevertheless had adequate procedures in place to prevent persons associated with it from undertaking such conduct.

6. ROLES AND RESPONSIBILITIES

6.1 Chief Executive

- 6.1.1 The Chief Executive has overall executive responsibility for the activities of the Health Board; is responsible to the Chair and the Board for ensuring that financial obligations and targets are met; and has overall responsibility for the system of internal control.
- 6.1.2 In doing so, the Chief Executive has overall responsibility for ensuring compliance with Directions on fraud, bribery and corruption notified by the Welsh Government.

6.2 Director of Finance

- 6.2.1 The Director of Finance is responsible for maintaining an effective system of internal financial control including ensuring that detailed financial procedures and systems incorporating the principles of separation of duties and internal checks are prepared, documented and maintained.
- 6.2.2 In doing so, the Director of Finance has operational responsibility for monitoring and ensuring compliance with Welsh Government Directions, and ensuring that action to counter economic crime is in accordance with the NHS Anti Fraud Manual and Fraud, Bribery and Corruption Standards for NHS Bodies (Wales).
- 6.2.3 The Director of Finance shall inform and consult with the Chief Executive at the first opportunity in all cases where losses resulting from economic crime may exceed the delegated limit (or such lower limit as the Board may determine) or where the incident may lead to adverse publicity.
- 6.2.4 In cases where investigations have found evidence that an economic crime has potentially been committed, the Director of Finance must review the case with the LCFS and give formal authority to prosecute before a file can be passed to the Crown Prosecution Service (CPS) for a charging decision.
- 6.2.5 The Director of Finance is responsible for ensuring that all losses are properly managed in accordance with the guidance contained within the Welsh Government's Manual of Accounts, as set out in Standing Financial Instructions. In cases of economic crime, or of anomalies which may indicate economic crime, the Director of Finance must inform the LCFS, the NHS Counter Fraud Service Wales Team and NHS Counter Fraud Authority, in accordance with Directions issued by the Welsh Ministers on fraud and corruption.
- 6.2.6 The Director of Finance shall liaise with the NHS Counter Fraud Service Wales and/or LCFS before any decision is taken on the referral of a case of economic crime to the Police or any other external body for assistance or investigative action.
- 6.2.7 The Director of Finance is responsible for ensuring that the Health Board seeks financial redress in respect of any losses incurred, where appropriate.

6.3 Audit & Assurance Services (NWSSP)

- 6.3.1 NHS Wales Shared Services Partnership (NWSSP) Audit & Assurance Services will ensure that due regard is given to the possibility of economic crime and other irregularities as part of their work, and will seek to identify weaknesses in control that could permit economic crime or other irregularity to occur.
- 6.3.2 The Head of Audit & Assurance with responsibility for the delivery of services to Swansea Bay UHB will ensure that any detected system weaknesses are reported to the LCFS for further review as appropriate.
- 6.3.3 Any incident or suspicion that comes to the attention of the Head of Audit & Assurance, or a member of his/her team, will be passed immediately to the LCFS for further investigation. The outcome of that investigation may necessitate further work by internal or external audit to review systems.
- 6.3.4 In any event, Audit & Assurance Services will share information and intelligence with Local Counter Fraud Services in line with the agreed information sharing protocol.

6.4 Workforce & Organisational Development

- 6.4.1 Workforce & Organisational Development staff (W&OD) will liaise closely with managers and the LCFS if an employee is suspected of being involved in economic crime. Whilst this close liaison is essential in ensuring that parallel sanctions (i.e. criminal, civil and disciplinary sanctions) are applied effectively and in a coordinated manner, the timing and content of any information exchanged will be critical, and so will be judged on a case-by-case basis in accordance with agreed liaison protocols.
- 6.4.2 W&OD staff shall advise those involved in an investigation on matters of employment law and other procedural matters, such as disciplinary and complaints procedures, as required.
- 6.4.3 Where a member of staff is to be interviewed under caution the LCFS shall consult and liaise with W&OD and/or the relevant departmental head.
Interviews under caution must only be conducted by the LCFS.

6.5 Local Counter Fraud Specialist (LCFS)

- 6.5.1 The Local Counter Fraud Specialist(s) (LCFS) are appointed by and report directly to the Director of Finance, and are the primary point of contact for all economic crime concerns within each health body. They are professionally trained and accredited, and equipped to respond to any concerns raised by staff.
- 6.5.2 The primary responsibility of the LCFS is the day-to-day implementation of action under the four Key Principles of economic crime activity:
- Strategic Governance
 - Inform & Involve
 - Prevent & Deter
 - Hold to Account

6.5.3 The LCFS produce an annual risk-based work plan at the beginning of each financial year, detailing planned activity under each of these four Key Principles. Progress is reported to and monitored by the Director of Finance and Audit Committee.

6.5.4 The LCFS is responsible for the thorough, impartial and professional investigation of all allocated economic crime allegations and concerns, which are conducted in line with all relevant legislation, policies and guidance. In doing so, the LCFS will ensure that the Director of Finance and NHS Counter Fraud Service Wales are informed about all such referrals received, and are regularly updated on action and progress.

6.6 Staff Responsibilities

6.6.1 All staff are required to comply with the Health Board's policies and procedures, and apply best practice in order to prevent fraud, bribery and corruption which may affect the organisation.

6.6.2 Staff have a duty to protect the assets of the Health Board, including information and goodwill as well as property, and to notify the LCFS of any suspected economic crime or inappropriate actions. Staff are protected by this policy as well as the Health Board Procedure for NHS Staff to Raise Concerns in all cases where suspicions are genuinely raised.

6.6.3 In addition to making a direct report to the LCFS or Director of Finance, suspected NHS economic crime can also be reported in the following ways:

- Via the NHS Fraud and Corruption Reporting Line on **0800 028 40 60**
- On-line at <https://cfa.nhs.uk/reportfraud>

All contact will be treated in the strictest confidence.

6.7 Health Board Management

6.7.1 Over and above the staff responsibilities detailed above, those in management positions are also responsible for ensuring:

- Effective communication and consistent application of all relevant policies and procedures (including this one) within the areas for which they are responsible.
- The implementation of effective systems, processes and controls designed to reduce the risk of economic crime to a minimum
- The promotion of an anti-economic crime culture within their area(s) of responsibility, raising awareness of the risk of economic crime with their staff
- Ensuring that staff are aware of the correct course of action should they have a concern (i.e. contact the LCFS).

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- 6.7.2 All instances of actual or suspected economic crime which come to the attention of a manager must be reported immediately. It is appreciated that some employees may initially raise concerns with their manager; however in such cases, managers must not attempt to investigate the allegation themselves. They have a clear responsibility to refer the concern to the LCFS as soon as possible.
- 6.7.3 Managers have a responsibility to ensure that the LCFS or other persons authorised to carry out investigations have access, as soon as is practical, to premises, records, data and staff who may have relevant information.
- 6.7.4 Managers should ensure that employees are aware that the LCFS will routinely examine information in the course of their duties, e.g. claims for travel expenses, overtime claims, attendance records, work rotas and other documents.

7. THE RESPONSE PLAN

7.1 Introduction

- 7.1.1 The following narrative describes the Health Board's intended response to a reported suspicion of economic crime. It outlines procedures which allow for evidence gathering and collation in a manner that will facilitate informed initial decisions, while ensuring that evidence gathered will be admissible in any future criminal, disciplinary or civil action. The narrative has also been summarised in a series of process charts included at **Appendix 2**.
- 7.1.2 Each case is different; it is not possible to cover all of the situations and complexities which can arise during the course of an investigation. The exact processes followed will therefore need to be considered carefully in relation to the actual circumstances of the matter under investigation before action is taken. In some cases, e.g. if a major diversion of funds is suspected, speed of response may be crucial to minimise or avoid financial loss.
- 7.1.3 The NHS Counter Fraud Authority (CFA) has a range of information sharing agreements and memorandum of understanding in place with key stakeholders. These provide a framework for the exchange of information for the prevention, detection, investigation and prosecution of economic crime matters, and are intended to facilitate good working relationships and clear lines of communication between all parties.

7.2 Aim of the Response Plan

- 7.2.1 The aim of the Response Plan is to have measures in place to respond professionally and appropriately to any alleged economic crime against the Health Board or wider NHS. Its purpose is to -
- (a) Minimise the risk of subsequent losses;
 - (b) Maximise the chance and scale of recoveries;
 - (c) Ensure that a thorough and professional investigation is undertaken;
 - (d) Demonstrate that the Health Board retains control of its affairs in a crisis, thereby minimising any adverse publicity;
 - (e) Make a clear statement to employees and other parties that the organisation is not a soft target for attempted economic crime.
 - (f) Identify weaknesses and lessons learned for the future.

7.3 REPORTING FRAUD

- 7.3.1 If someone suspects that an economic crime has been perpetrated against the organisation or wider NHS, or by one of its employees, they must report the matter immediately using one of the following options:
- In the first instance, it is recommended that they contact the LCFS or Director of Finance.
 - Alternatively, for example if the LCFS or Director of Finance may be implicated in the concern, they can call the NHS Fraud and Corruption Reporting Line on free phone **0800 028 40 60**. This provides an easily accessible route for the reporting of genuine suspicions of economic crime within or affecting the NHS. It allows those who do not wish to use the internal reporting mechanisms to report their concerns in the strictest confidence. All calls are dealt with by experienced trained staff and any caller who wishes to remain anonymous may do so.
 - Concerns can also be reported online at <https://cfa.nhs.uk/reportfraud>
- 7.3.2 Contact can also be made with the charity Protect (formerly known as Public Concern at Work) on 020 3117 2520. They are able to provide additional advice on how to go about raising matters of concern in the appropriate way.
- 7.3.3 Anonymous letters, telephone calls, etc are also sometimes received from individuals who wish to raise matters of concern. While the suspicions may be erroneous or unsubstantiated, they may also reflect a genuine cause for concern and will always be taken seriously.
- 7.3.4 If an economic crime is suspected, it is essential that there is the earliest possible consultations with the LCFS before any overt action is taken which may alert suspects or result in the destruction or removal of evidence. This includes taking action to stop a loss or tighten controls.
- 7.3.5 The LCFS will make sufficient initial enquiries to establish whether or not there is any foundation to the concern that has been raised. If it is found that there is no basis to the concern (for example, the result of a simple misunderstanding of circumstances), the LCFS will complete a closure report and the matter will be closed. If the allegations are found to be malicious, they will also be considered for further investigation to establish their source.
- 7.3.6 Where these initial enquiries do find cause for concern, the Operational Fraud Manager for Wales will allocate the matter for preliminary investigation.
- 7.3.7 A record will be retained of all reported suspicions, including those dismissed as minor or otherwise not investigated. It will also contain details of actions taken and conclusions reached.
- 7.3.8 Where a member of staff identifies a potential economic crime, it is Health Board policy that under no circumstances should they speak or write to representatives of the press, TV, radio, or to any third party about the matter without the express authority of the Chief Executive. Care needs to be taken to ensure that nothing is done that could frustrate future legal action being taken against those thought to be guilty of any offences, or give rise to an action for slander or libel.

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- 7.3.9 Instances of theft or damage to Health Board or personal property should be reported to the Police at the earliest opportunity on every occasion.

7.4 MANAGING THE PRELIMINARY INVESTIGATION

- 7.4.1 Where there are grounds to suspect that an economic crime may have occurred, the Operational Fraud Manager for Wales will allocate the case for preliminary investigation by either the LCFS or the NHS Counter Fraud Service Wales Team.
- 7.4.2 At the outset (and throughout any investigation), the LCFS and/or CFS Wales will ensure that appropriate communication is maintained with the Director of Finance, and any other party deemed necessary, in order to ensure that they are appropriately appraised on the progress and findings.
- 7.4.3 The following, whilst not intended to be exhaustive, outlines some of the initial issues to be considered as part of the preliminary investigation process:
- (a) Where the allegation relates to a Health Board employee, immediate consideration should be given to the need to suspend or redeploy the individual(s) concerned.
 - (b) The need to address any system weaknesses identified, to remove the possibility of further economic crime being committed against the Health Board, and the timing of such action.
 - (c) The preparation of background or objective statements, outlining the nature of the suspected incident.
 - (d) The LCFS overseeing the investigation should initiate an action plan with clearly identified objectives, and a Case Progress Sheet should be kept in order to record the progress of the investigation.
 - (e) The implementation of procedures for preserving evidence.
 - (f) Ensure that proper arrangements are in place for undertaking and formally recording witness statements and interviews in a manner which would be acceptable to the Courts.
 - (g) Estimate and monitor the costs of the investigation (if appropriate)
 - (h) Maintain regular contact to discuss progress and the likely outcome with the Director of Finance and any other relevant parties.
- 7.4.4 Where the findings of the preliminary investigation indicate that an economic crime has taken place and this is allocated for local investigation, the process of taking witness statements and gathering evidence will then be progressed by the LCFS in line with Section 7.5 (Chart 3).
- 7.4.5 Should the investigation find insufficient or no evidence that a criminal act has taken place; the LCFS will complete a Preliminary Outcome of Investigation Report detailing those findings, together with any recommendations considered

necessary to address system weaknesses highlighted. The next step should then be to determine what (if any) further action is considered necessary. This may include one or all of the following:

- Internal (Health Board) disciplinary investigation
- Referral to the appropriate professional/member body
- Civil proceedings or recovery of any identified loss.

7.4.6 Where appropriate, the LCFS will assist with any further action(s) considered necessary. This will include sharing the findings of the criminal investigation where it is lawful to do so.

7.4.7 At their conclusion, the LCFS will be advised of the outcome of all further action(s) taken. The Director of Finance, CFS Wales, and other relevant parties will also be updated as appropriate. The LCFS will then produce a Final Outcome Report, and the case will be closed.

7.5 GATHERING EVIDENCE – WITNESS STATEMENT AND EXHIBITS

7.5.1 If a witness who has information pertaining to the matter under investigation is prepared to give a written statement, the LCFS will take a chronological record using the witness's own words. The witness should be prepared to sign the document as a true record, and if necessary to appear in court in support of their statement.

7.5.2 In addition to giving a statement a witness may also be in possession of, or be in a position to formally produce, physical evidence or key documents which are germane to the matter under investigation.

7.5.3 The collection of such evidence must be coordinated if more than one party is involved in an investigation (for example if criminal and disciplinary investigations are being conducted side-by-side). Evidence gathering requires skill and experience and professional guidance should be sought where necessary, particularly in relation to evidence stored on or obtained from electronic media. There is a considerable amount of case law concerning the admissibility of evidence.

7.5.4 For the purposes of criminal proceedings, the admissibility of evidence is governed by the Police and Criminal Evidence Act 1984 (PACE). For non-criminal proceedings (i.e. civil or disciplinary), PACE does not apply but should nevertheless be regarded as best practice.

7.5.5 Upon taking control of any physical evidence, it is very important that a written record is made of the time, date, person and place it is taken from, and by whom – continuity is essential. If the evidence consists of several items, for example many documents, each one should be tagged with a reference number corresponding to the written record.

7.5.6 Witness testimony and evidence gathered will be kept under constant review during the course of an investigation. If, having exhausted all reasonable lines of enquiry, it is felt that there is insufficient evidence to warrant conducting an interview under caution, the matter will be progressed in line with paragraph 7.4.5 and Chart 2 of this Policy.

7.5.7 Alternatively, if it felt that there is sufficient cause, the subject(s) of the investigation will be invited to a voluntary interview under caution. It should be noted that an interview under caution should only be conducted by an accredited and nominated LCFS.

7.5.8 Where the possible use of police powers such as arrest is being considered, for example if a subject has refused to attend for interview, the LCFS will confer with both the Director of Finance and NHS Counter Fraud Service Wales prior to contacting the Police to request assistance.

7.6 INTERVIEW UNDER CAUTION AND FURTHER ENQUIRIES

7.6.1 The requirements of PACE (Police and Criminal Evidence Act 1984) must be considered before and during any interview under caution with a subject, as compliance with the Act determines whether evidence is admissible in criminal proceedings. **Interviews under caution must only be conducted by the LCFS.**

7.6.2 The LCFS will review the account given at interview by the subject and decide what, if any, further investigation is required. In doing so, advice may be taken from the NHS Counter Fraud Service Wales, CPS or any other relevant party. Where the responses obtained during the interview open new lines of enquiry, these must be pursued, and may result in the subject being interviewed again.

7.6.3 Once the LCFS is satisfied that all reasonable lines of enquiry have been pursued and concluded, the full findings of the investigation are reviewed. Typically this process results in one of two outcomes:

- There is insufficient (or no) evidence that a crime has been committed. At this point (if not already commenced), consideration will be given to what other action may be appropriate (civil, disciplinary and/or referral to a professional/member body).
- The investigation has identified clear evidence that an economic crime has been committed

7.6.4 Where evidence of a criminal offence has been identified, a file of evidence will be passed to the Crown Prosecution Service (CPS) for a charging decision. The charging decision returned by the CPS will typically be one of the following:

- The evidence submitted fails to meet the Full Code Test set out in the Code for Crown Prosecutors, and as such, the matter is not suitable for prosecution. At this point (if not already commenced), consideration will be given to what other action may be appropriate (civil, disciplinary and/or referral to a professional/member body).
- The evidence submitted meets the Full Code Test set out in the Code for Crown Prosecutors. A decision will then be made on the most appropriate charge(s), based on the evidence presented.
- The matter would most appropriately be dealt with using an out-of-court disposal, typically via the issue of a simple or conditional caution. In reaching this decision, the CPS must ensure that the appropriate evidential standard

is met, and that the public interest would be properly served by such a disposal.

- Further investigation is required before a charging decision can be made. The matter would then be referred back to the LCFS who would complete the additional investigation(s) requested, and submit further evidence to facilitate the charging decision.

7.7 CONCLUSION OF THE INVESTIGATION

- 7.7.1 At the conclusion of the investigation, and once the outcome of any criminal proceedings and/or other actions are known, the LCFS will produce an Outcome of Investigation Report. Typically, copies of this report will be provided to the Director of Finance and Operation Fraud Manager for Wales. Summaries (anonymised as/if appropriate) will also be included in activity reports to the Audit Committee.

8. SANCTIONS

- 8.1 The Health Board is committed to the rigorous investigation of all reported cases of potential economic crime effecting the organisation, and to seeking sanctions wherever appropriate.
- 8.2 Mechanisms have been put in place to ensure that the investigation of reported economic crime is conducted in a way which ensures that the widest possible range of sanctions remain available throughout the process, and the application of parallel sanctions is always considered.
- 8.3 It is important to emphasise that whilst the following provides a framework to apply parallel sanctions, it is not prescriptive. The decisions on which methods to apply and when will be made on a case-by-case basis:
- a) **Criminal Prosecution** - Where there is evidence that a criminal offence has been committed, the Health Board will work with CFS Wales, the Crown Prosecution Service and where necessary the Police in order to ensure that the most appropriate criminal sanction is applied.
 - b) **Disciplinary Sanction** – Where it appears that Health Board policies and procedures have been breached or standards of conduct contravened; this will be investigated in line with the Disciplinary Policy & Procedure. Where proven, potential outcomes include verbal or written warnings or, where the employee's actions are considered to be gross misconduct, dismissal.
 - c) **Professional Body Referral** – Where necessary, a subject's actions may also be referred to their professional body (NMC, GMC, GPHC etc.) for investigation under the terms of their code of conduct or its equivalent. Where proven, potential outcomes include the suspension or removal of the subject from the relevant practitioner register.
- 8.4 In respect of b) and c) above, where it is appropriate, the LCFS will assist with any investigations undertaken. This will include sharing the findings of the criminal investigation where it is lawful to do so.

9. REDRESS

9.1 The seeking of financial redress or recovery of losses will always be considered by the Health Board.

9.2 As a general rule, recovery of the loss caused by the perpetrator should always be sought; however it is important to stress that such decisions (as well as decisions relating to the most appropriate method of seeking redress) must be taken in light of the particular circumstances of each case. Where necessary, advice should be sought from CFS Wales and an appropriate Solicitor as part of that process.

9.3 Civil Proceedings - Freezing Orders, Asset Disclosure and Tracing

9.3.1 Redress or recovery can be achieved via a local agreement between the Health Board and the subject to repay monies lost, or through enforcement of a civil order for repayment.

9.3.2 If there is evidence to show that monies or other assets have been fraudulently misappropriated, and there is a risk of dissipation by the suspected person(s), consideration should be given to applying to the civil courts for injunctive relief without notice to the suspected fraudster. The High Court has the power to grant injunctions 'in all cases in which it appears to the court to be just and convenient to do so' (Section 37 Senior Court Act 1981). A freezing order is an interim order which restrains a party or parties from:

- Removing from the jurisdiction assets which are located there
- Or
- Dealing with any assets, whether located in the jurisdiction or not

Typically the order will be confined to assets within the jurisdiction if they are of sufficient value to match the value of the claim.

9.3.3 An injunction, such as a freezing order, is accompanied by a 'Penal Notice'. This warns the subject that any failure to comply properly or at all with the order may be a contempt of court punishable by sequestration of assets, fine, or in serious cases imprisonment. Further, any person who knows of the order and does anything which helps or permits the subject to breach its terms may also be held in contempt of court, and may be imprisoned, fined, or have their assets seized.

9.3.4 The injunction can also include additional orders to assist the claimant in securing or tracing assets. The provision of information by the subject to the claimant and the Court about property and assets is known as 'asset disclosure'. Information about what has become of property and/or assets (e.g. the subject may have bought a house or shares with misappropriated money, or converted a misappropriated asset into cash and then purchased another asset with some or all of the sale proceeds) is known as 'tracing information'.

9.3.5 Orders can also be made prohibiting the subject from leaving the jurisdiction for a prescribed period of time, and in appropriate cases compelling him or her to deliver up passports and other travel papers until they provide the asset and/or tracing information.

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- 9.3.6 The standard form of freezing order provides that the subject must give asset disclosure immediately upon being served, and subsequently confirm that information within a certain time limit on affidavit.
- 9.3.7 It should also be noted that third parties in possession or control of funds and/or other assets belonging to the subject who are aware of the freezing order (e.g. banks) are also bound by it.
- 9.3.8 A freezing order does not by itself give the claimant any property rights over the assets in question. The question of rights is dealt with at the substantive civil proceedings which the order supports. The purpose of the freezing order is purely to prevent the subject from making him or herself judgement-proof (i.e. dealing with or disposing of assets so that if a claimant is successful, there are no assets left to satisfy the judgement).
- 9.3.9 Freezing orders can be obtained from the civil court 'without notice' and 'in private'. The application is made behind closed doors, without the knowledge of the intended subject and at a hearing that members of the public are not entitled to attend. This helps to protect against the risk that the subject may take action to frustrate a claimant's efforts to secure assets.
- 9.3.10 Interim injunction orders such as these must be followed by a substantive claim against the subject, which they may admit or defend in the usual way. This means, in practice, that the claimant must be ready to commence the civil claim when the orders are being obtained from the court. The standard form of freezing order contains undertakings to the court that the claimant will serve substantive proceedings (i.e. the claim form) on the subject 'as soon as is practicable', and this is rigorously policed.

9.4 Criminal Proceedings - Restraint and Confiscation/Compensation

- 9.4.1 In an appropriate case, the criminal court has the power to impose a restraint order, followed by a confiscation order, on application by the investigator or prosecutor.
- 9.4.2 Investigators may apply to the Crown Court for a restraint order under Section 40 of the Proceeds of Crime Act 2002 (POCA), provided that a criminal investigation has begun. If there is no such criminal investigation and assets are at risk, a freezing order and any other necessary interim relief must be considered (see Section 9.3).
- 9.4.3 If criminal proceedings result in a conviction, confiscation proceedings may follow seeking the confiscation of the restrained assets by reference to the benefit the offender has enjoyed from their crime. In certain circumstances, the court will be entitled to assume that the offender has conducted a 'criminal lifestyle', with the result that all assets obtained by them during the preceding 6 years will be subject to confiscation. The burden is on the offender to show, to the civil standard of proof, that those assets have been legitimately acquired.
- 9.4.4 A confiscation order results in forfeiture by the criminal to the state of the 'benefit' of the crime. The victim (e.g. the health body) will not receive any of the forfeited assets unless they are successful in an application to the court for

a compensation order. If the application is successful, the victim will receive all or part of the proceeds of the confiscated assets. In this way the full rigours of the confiscation provisions are brought to bear on the defendant in the recovery of the proceeds of crime, but the end-product of that recovery is paid to the health bodies rather than the treasury.

- 9.4.5 If the defendant is acquitted or the prosecution dropped, this may – depending on the reason – be grounds for the discharge of the restraint order. If the restraint order is discharged, leaving the defendant free to deal with or dispose of their assets, the onus will be on the victim to seek civil recovery and obtain a freezing order to replace the restraint order.

Examples of Economic Crime

The following are examples of areas where economic crime can and does occur within NHS Wales:

- Intentionally submitting false or inflated expenses and/or subsistence claims.
- Falsifying or altering work attendance records or claim forms to claim payment or time off for work not carried out.
- Submission of false or inflated invoices by the suppliers of goods or services.
- Working in other employment whilst claiming sick pay from the Health Board without permission.
- Placing requisitions and/or orders for goods or services for personal use.
- Using petty cash to obtain reimbursement for items of personal use.
- Bank mandate fraud.
- Knowingly failing to disclose and return salary overpayments received.
- Using Health Board property and facilities for personal use without the knowledge or consent of the organisation.
- Undertaking private work in NHS time.
- The submission of false or misleading claims by primary care contractors.
- Inappropriately awarding work to suppliers/contractors in exchange for gifts/money.
- Providing false or misleading information on application forms, such as failing to declare previous convictions (including those that are spent).

Counter Fraud Response Plan Process Charts

CHART 1 – Reporting a Suspicion or Concern

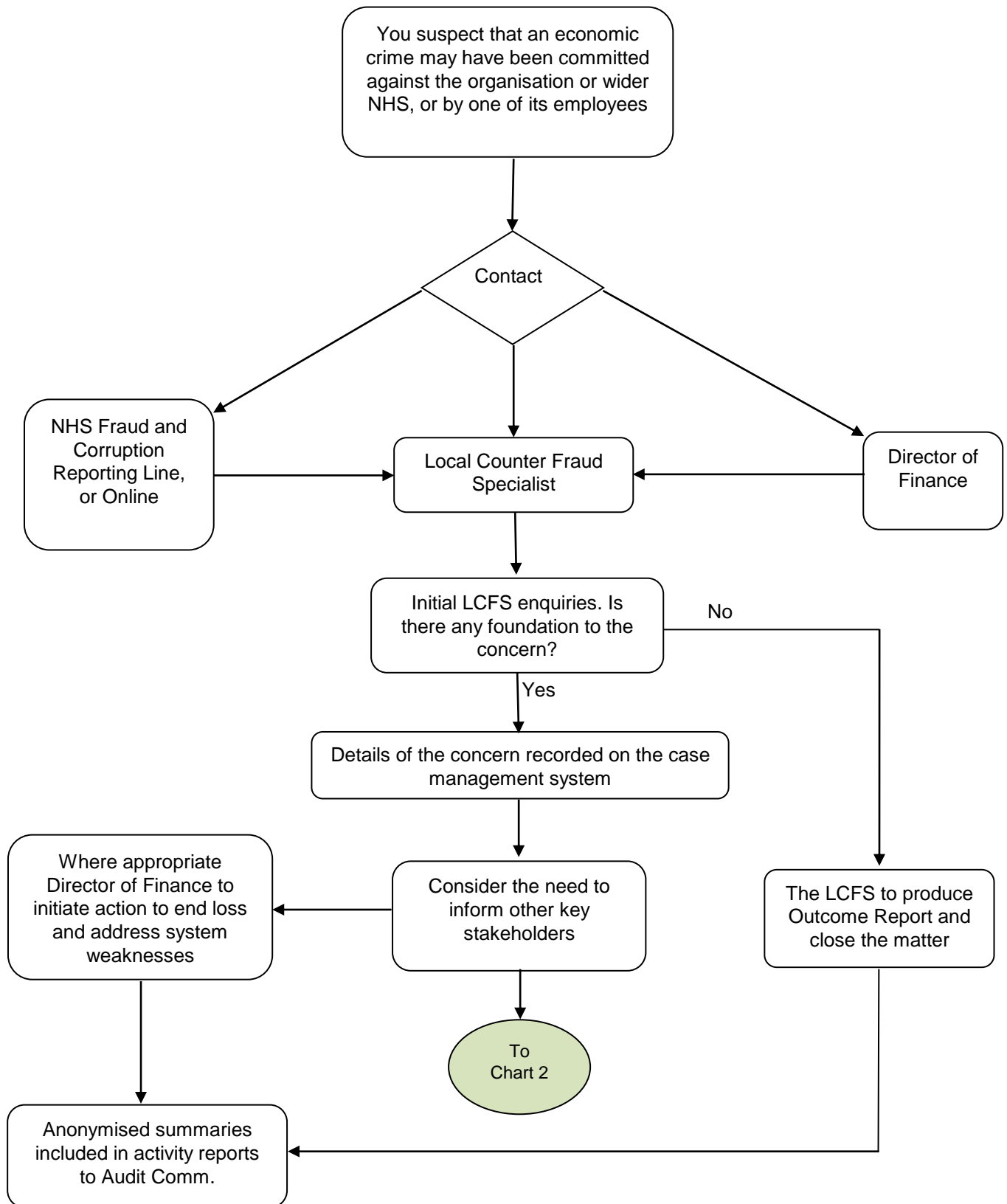


CHART 2 - Managing the Preliminary Investigation

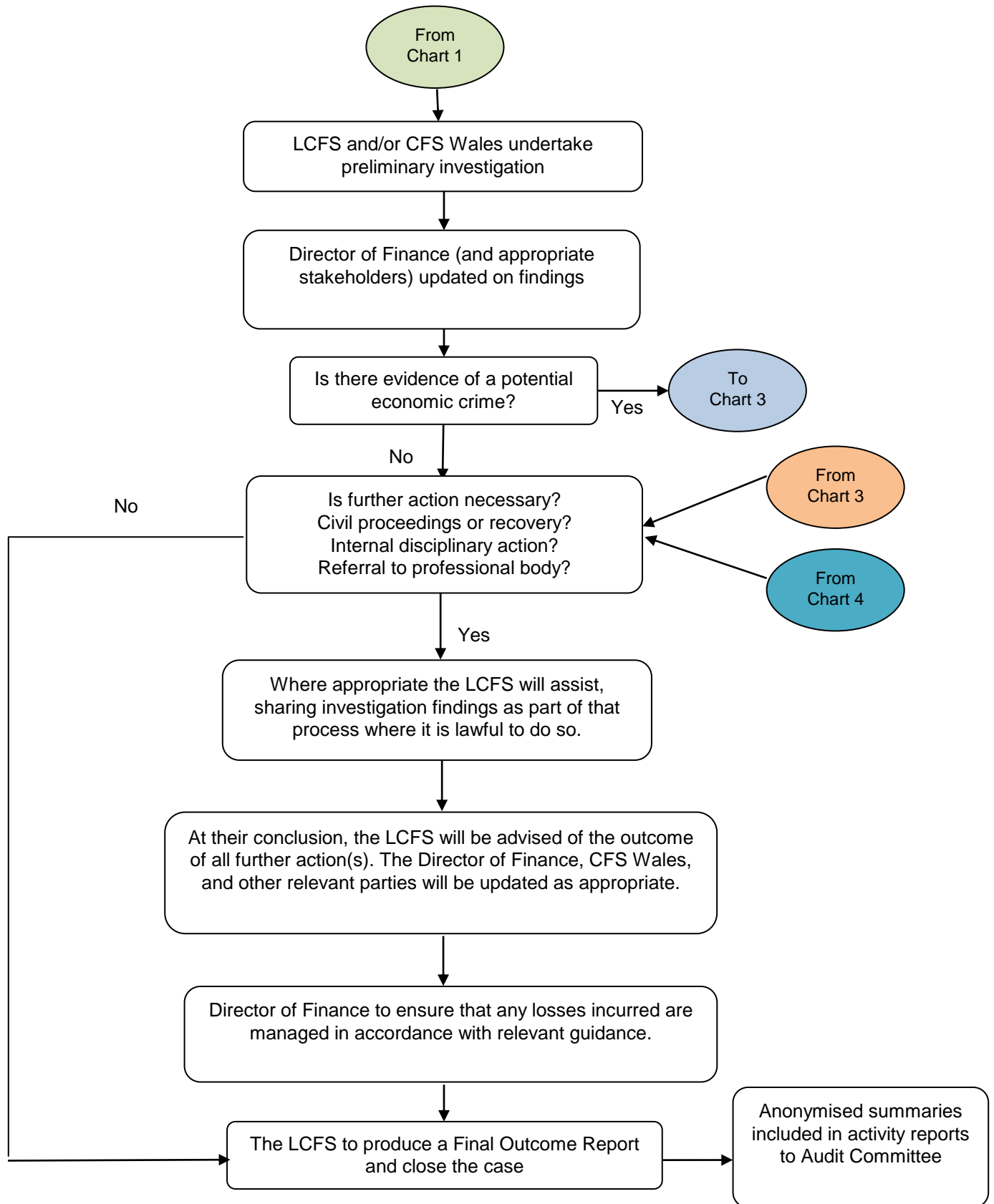


CHART 3 – Gathering Evidence

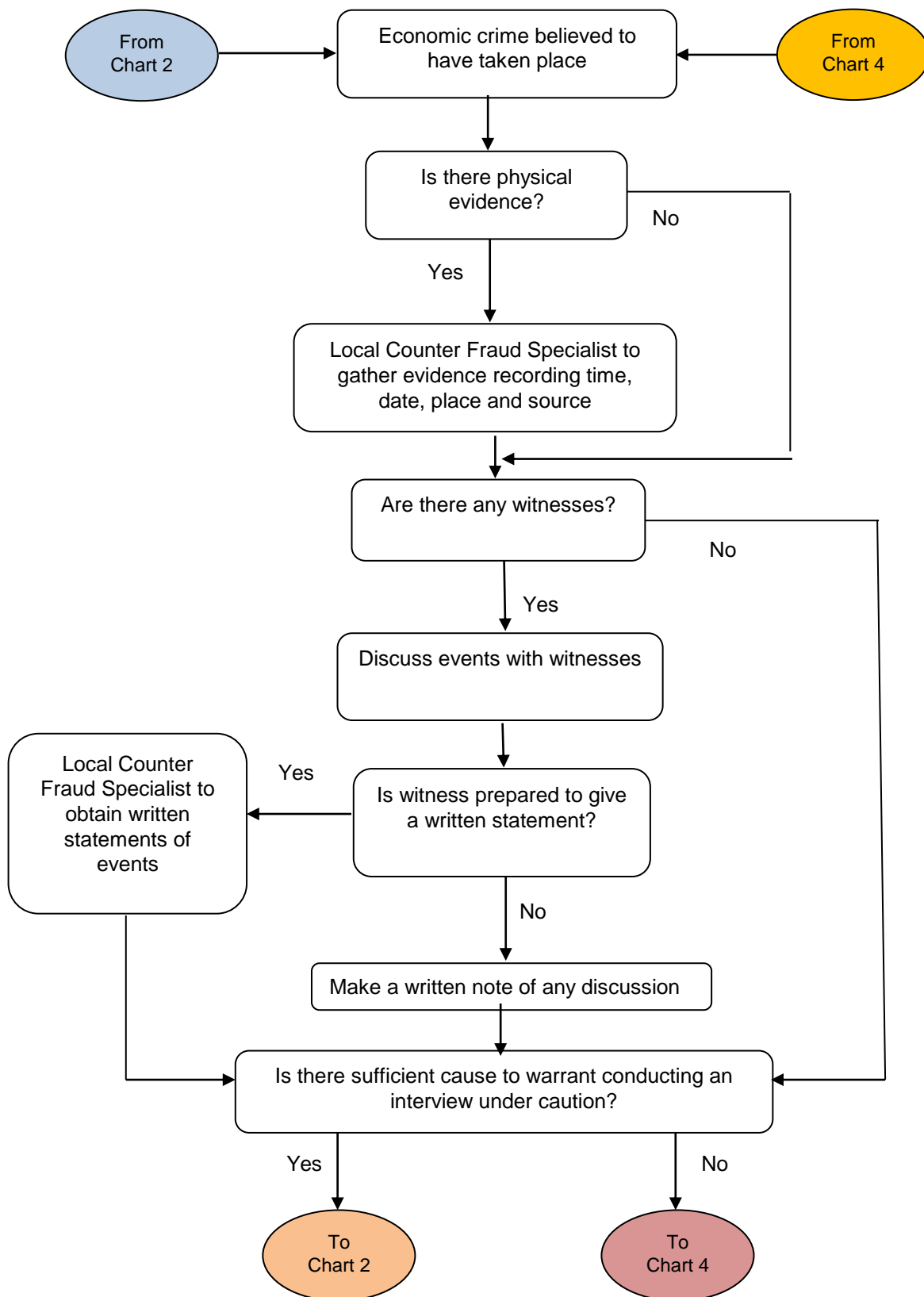
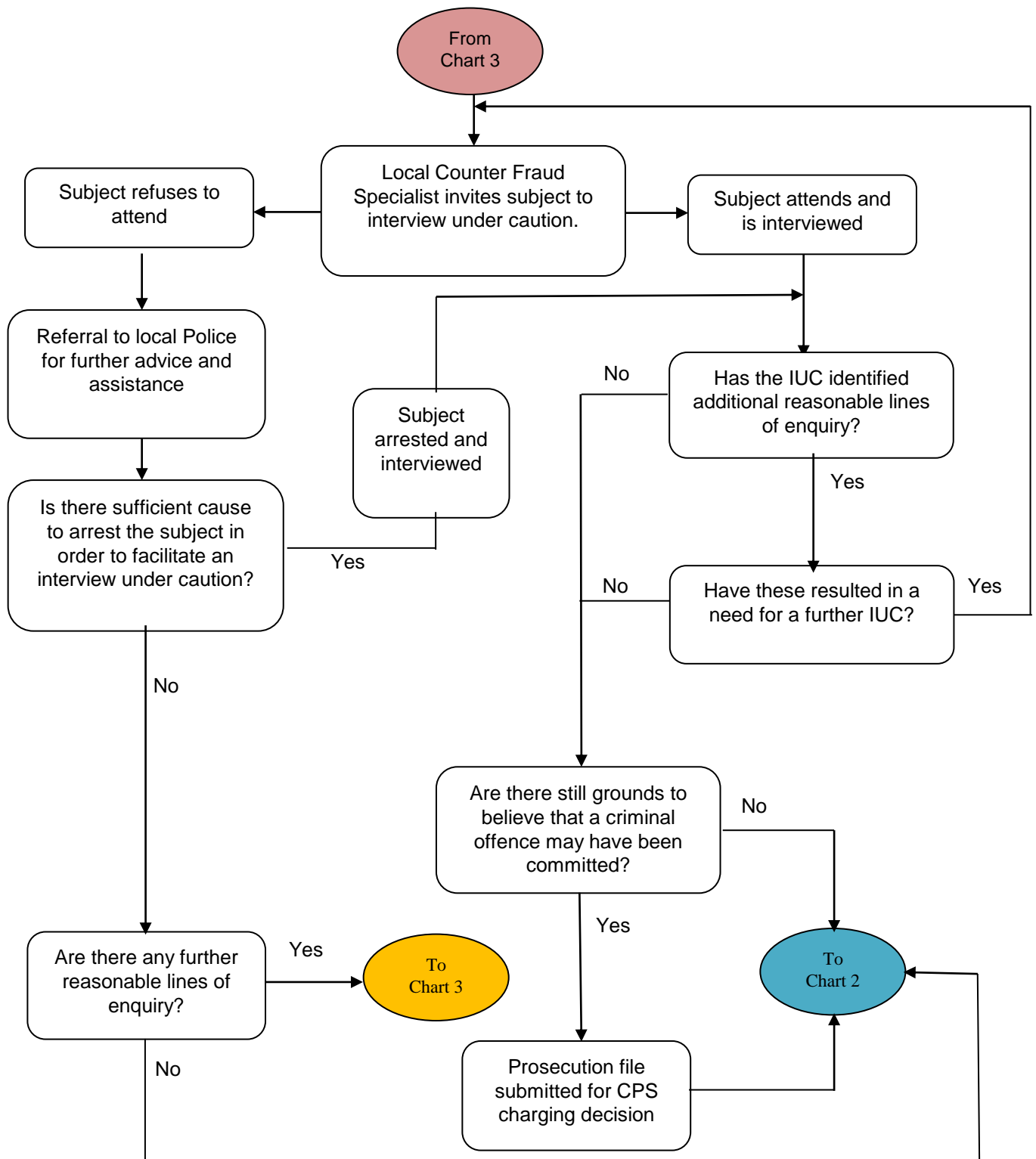


CHART 4 - Interview under Caution & Further Enquiries



How to Report Concerns Contact Details

If you have any suspicions or concerns about possible fraud, bribery or corruption in the NHS we want to hear from you. The Health Board's Local Counter Fraud Specialists can be contacted in a number of ways. You can telephone or e-mail us as follows:

Name	Telephone	Email
Neil Jones	01792 516442	neil.jones7@wales.nhs.uk
Zoë Whetton	01792 517872	zoe.whetton@wales.nhs.uk

You can also write to us at:

**Counter Fraud Services
Block A, Neath Port Talbot Hospital
Baglan Way
Port Talbot
SA12 7BX**

Alternatively, you can contact The National Fraud & Corruption Reporting Line on **0800 028 40 60** or on-line at <https://cfa.nhs.uk/reportfraud>

All calls will be treated in the strictest confidence