

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

**ABERTAWE BRO MORGANNWG UNIVERSITY
LHB**

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 March 2016

Contents

	Page
1. Introduction	3
2. What is Fraud?	4
3. What is Bribery?	5
4. Public Service Values	6
5. The LHB Board's Policy	6
6. Roles and Responsibilities	7
7. The Response Plan	10
8. Investigation Resource Options	21
9. Sanction and Redress	22
10. Interviews	25
11. Further Guidance on Economic Crime	27
12. Guidance to Staff on Economic Crime	28
13. Confidentiality	31

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 means of enforcing the rules against fraud, bribery and corruption, and other illegal acts involving dishonesty or damage to property. For simplicity all such offences are hereafter referred to as “economic crime”, except where the context indicates otherwise. This document sets out the LHB’s policy and response plan for detected or suspected economic crime.
- 1.2 The LHB 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 LHB Board tries to ensure that a risk (and economic crime) awareness culture exists in the LHB.
- 1.3 This document is intended to provide direction and help to those Officers and Directors who find themselves having to deal with suspected cases of fraud, bribery or corruption. 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 Section 2 defines Fraud. Section 3 defines bribery. Section 4 sets out the public service values that must underpin the activities and culture of the LHB. Section 5 sets out the LHB Board’s policy on dealing with economic crime. Section 6 sets out the roles and responsibilities of Directors and staff of the LHB in relation to reported economic crime. Section 7 is the Response Plan that the LHB will follow where an economic crime is reported. Section 8 sets out the options available to the LHB in choosing how to investigate. Section 9 briefly sets out the Health Board’s position regarding the pursuit of sanction and redress, and the options available. Section 10 gives guidance on interview procedure. Section 11 suggests sources of further guidance. Section 12 provides guidance that can be issued to staff advising them of what they should do if they suspect an economic crime.
- 1.5 This Policy should be read in conjunction with the LHB’s Disciplinary Policy, and Procedure for NHS Staff to Raise Concerns.

2. WHAT IS FRAUD?

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

Serious Fraud Office

Put simply, fraud is an act of deception intended for personal gain or to cause loss to another party.

- 2.2 The Fraud Act 2006 created a general offence of fraud, which can be committed in three ways. It is no longer necessary to prove that a person has been deceived. The focus is now on the dishonest behaviour of the suspect and their intent to make a gain or cause a loss.

- 2.3 The offence of fraud can be committed in three ways:

- a) Fraud by false representation (s.2) – lying about something using any means, e.g. by words or actions
- b) Fraud by failing to disclose (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.

- 2.4 It should be noted that all offences under the Fraud Act 2006 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.

- 2.5 Examples of areas where fraud could occur within our organisation include:

- (a) Travel and expense claims
- (b) Petty cash
- (c) Claims from Primary Care contractors
- (d) Time sheets and salary returns
- (e) Working whilst on sick leave
- (f) Handling of cash
- (g) Misappropriation of equipment/stocks
- (h) Awarding of contracts
- (i) Invoicing
- (j) Undertaking private work in NHS time

3. WHAT IS BRIBERY?

- 3.1 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.
- 3.2 Bribery is a form of corruption, whereby an inducement or reward of a financial or other advantage is offered, promised or provided to a person in order to gain any commercial, contractual, regulatory or personal advantage through the improper performance of a relevant function or activity as a result of the bribe.

The offence can now be committed in 3 different ways:

- 1) Bribing another Person (s.1) – To offer promise or gift 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.
 - 2) Being Bribed (s.2) – making requests or agreements to receive or accept financial or other advantages, intending that a function or activity should be performed improperly, or to reward improper performance, or that the receipt or acceptance itself would constitute improper performance.
 - 3) Failure of Commercial Organisations to Prevent Bribery (s.7) – a person associated with an organisation bribes another person intending to obtain or retain business or an advantage for that organisation.
- 3.3 An organisation will have a full defence against Section 7, 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 bribing.

4. PUBLIC SERVICE VALUES

- 4.1 Public service values must be at the heart of the NHS. 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.
- 4.2 The Codes of Conduct and Accountability for NHS Boards has been substantially rewritten from those that were first issued to the Service. They have been brought up to date and restructured to separately show the conduct and accountability aspects. The Codes reinforce the 7 principles of public life (The Nolan Principles) and focus on the 3 crucial public service values which underpin the work of the Health Service – accountability, probity and openness.
- 4.2.1 **Accountability**
Everything done by those who work in the organisation must be able to stand the tests of Welsh Government scrutiny, public judgments on propriety and professional codes of conduct.
- 4.2.2 **Probity**
There should be an absolute standard of honesty in dealing with the assets of the NHS: 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.
- 4.2.3 **Openness**
The organisation's activities should be sufficiently public and transparent to promote confidence between the organisation and its patients, staff and the public.
- 4.3 All those who work in the organisation should be aware of, and act in accordance with, these values.

5. THE LHB BOARD'S POLICY

- 5.1 The LHB Board is absolutely committed to maintaining an honest, open and well-intentioned atmosphere within the LHB. It is therefore also committed to the elimination of economic crime within the LHB, and to the rigorous investigation of any such cases.
- 5.2 The LHB Board wishes to encourage anyone having reasonable suspicions that an economic crime may have been committed to report them. Therefore it is also the LHB Board's policy, which will be rigorously enforced, that no employee will suffer in any way as a result of reporting reasonably held suspicions.
- 5.3 For these purposes "reasonably held suspicions" shall mean any suspicions other than those that are raised maliciously and, following investigation, found to be groundless.

6. ROLES AND RESPONSIBILITIES

6.1 Chief Executive

- 6.1.1 The Chief Executive has overall responsibility for ensuring compliance with Directions on fraud, bribery and corruption notified by the Welsh Government.
- 6.1.2 The Chief Executive, via the Director of Finance shall liaise and reach agreement with the NHS Counter Fraud Service Wales and/or Local Counter Fraud Specialist before any decision is taken on the referral of a case of economic crime to the Police or any other external body for investigative action.

6.2 Director of Finance

- 6.2.1 The Director of Finance has responsibility for monitoring and ensuring compliance with Directions, and also 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).
- 6.2.2 The Director of Finance shall inform and consult 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 LHB Board may determine) or where the incident may lead to adverse publicity. The Director of Finance shall also notify the Welsh Government and the LHB Board of all Category 1 losses as appropriate. The Head of Internal Audit (NWSSP) should normally be informed immediately in all but the most trivial cases.
- 6.2.3 Guidance on special payments and losses states that if a health body suspects arson or theft of significant amounts, it should at once inform the police and the external auditors. The meaning of significant is what any reasonable person would deem to be significant in the circumstances. The Director of Finance will decide what is significant after taking advice if necessary. Where economic crime is suspected the circumstances of the case will dictate if/when the police are contacted and the external auditors informed.
- 6.2.4 The Director of Finance is responsible for ensuring that the LHB seeks financial redress in respect of any loss.
- 6.2.5 The Director of Finance has responsibility for ensuring compliance with WHC (99)33, "Guidance on Losses and Special Payments" as set out in Standing Financial Instruction 17.

6.3 Head of Internal Audit (NWSSP)

- 6.3.1 The Head of Internal Audit will ensure that any detected system weaknesses are reported to the Lead Local Counter Fraud Specialist so that they can be examined pro-actively to detect possible economic crime.
- 6.3.2 Any incident or suspicion that comes to Internal Audit's attention will be passed immediately to the Lead LCFS. The outcome of the investigation may necessitate further work by internal or external audit to review systems.

6.4 Workforce & Organisational Development

- 6.4.1 Workforce & Organisational Development staff (W&OD) will liaise closely with managers and the LCFS from the outset if an employee is suspected of being involved in economic crime, in accordance with agreed liaison protocols. Close liaison between the LCFS and W&OD will be essential to ensure that any parallel sanctions (i.e. criminal, civil and disciplinary sanctions) are applied effectively and in a coordinated manner.
- 6.4.2 W&OD shall advise those involved in the investigation on matters of employment law and other procedural matters, such as disciplinary and complaints procedures, as requested.
- 6.4.3 Where a member of staff is to be interviewed under caution the Director of Finance and/or the Local Counter Fraud Specialist shall consult and liaise with W&OD. Interviews under caution should only be conducted by the Local Counter Fraud Specialist.

6.5 Local Counter Fraud Specialist

- 6.5.1 The Local Counter Fraud Specialist(s) (LCFS) are appointed by the Director of Finance and will be responsible for the day-to-day implementation of action under the 4 Key Principles of economic crime activity:
- Strategic Governance
 - Inform & Involve
 - Prevent & Deter
 - Hold to Account
- 6.5.2 The LCFS will utilise appropriate systems to record details of all economic crime investigations undertaken, and will be responsible for notifying all cases of fraud to NHS Counter Fraud Service Wales.
- 6.5.3 The LCFS will ensure that the Director of Finance is informed about all referrals received, and regularly updated on action and progress.
- 6.5.4 The LCFS will be professionally trained and will have achieved accreditation, and will be professionally equipped to respond to concerns raised by staff.
- 6.5.5 The LCFS should be a senior employee who is authorised to treat enquiries confidentially and anonymously, if so requested by the employee contacting him/her.
- 6.5.6 The LCFS will ensure compliance with the Data Protection Act in respect of all information received.
- 6.5.7 The LCFS will ensure that the Audit Committee is informed of all cases under investigation.

6.6 LHB Management

- 6.6.1 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 will 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 concerns to the LCFS or the Director of Finance as soon as possible.
- 6.6.2 Managers have a responsibility to ensure that the Local Counter Fraud Specialist or other persons authorised to carry out investigations have access, as soon as practical, or within 7 working days of a request to premises, records, data and staff who may have relevant information.
- 6.6.3 Management will ensure that individual employees are aware that the Local Counter Fraud Specialist will routinely examine information in the course of his duties, e.g. claims for travel expenses, overtime claims, attendance records, work rotas and other documents used for accounting purposes.

6.7 Staff Responsibilities

- 6.7.1 All staff have a duty to protect the assets of the LHB. Assets include information and goodwill as well as property. In addition, all staff have a duty to notify the LCFS of any suspected economic crime or inappropriate actions, and are protected by this policy as well as the LHB Procedure for NHS Staff to Raise Concerns in all cases where suspicions are genuinely raised.
- 6.7.2 Alternatively, 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 www.reportnhsfraud.nhs.uk

All contact will be treated in the strictest confidence.

7. THE RESPONSE PLAN

7.1 Introduction

7.1.1 The following flowcharts and narrative describe the LHB's intended response to a reported suspicion of economic crime. The flowcharts are intended to provide procedures that 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 or civil action. Each situation is different; therefore the guidance in the flowcharts will need to be considered carefully in relation to the actual circumstances of each case before action is taken. In some cases, e.g. if a major diversion of funds is suspected, speed of response will be crucial to avoid financial loss.

7.1.2 A Memorandum of Understanding between NHS Protect (formerly the Counter Fraud and Security Management Service) and the Association of Chief Police Officers (ACPO) has been agreed which outlines each of their roles. This provides a framework for the exchange of information for the prevention, detection, investigation and prosecution of matters of fraud, bribery and corruption. It is intended to facilitate good working relationships between all parties and develop clear lines of communication.

7.1.3 In addition, there are also Counter Fraud Charters, protocols and other agreements in place between NHS Protect and central and local government agencies, regulators, representative bodies, unions and other relevant agencies.

7.2 Aims of the Response Plan

7.2.1 The aim of the Response Plan is to have measures in place to respond quickly and discreetly to any complaint concerning alleged economic crime. Its purpose is to: -

- (a) Minimise the risk of subsequent losses;
- (b) Maximise the chance and scale of recoveries;
- (c) Identify the fraudster and maximise the success of any disciplinary/legal action taken;
- (d) Demonstrate that the LHB 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 CHART 1 – REPORTING FRAUD

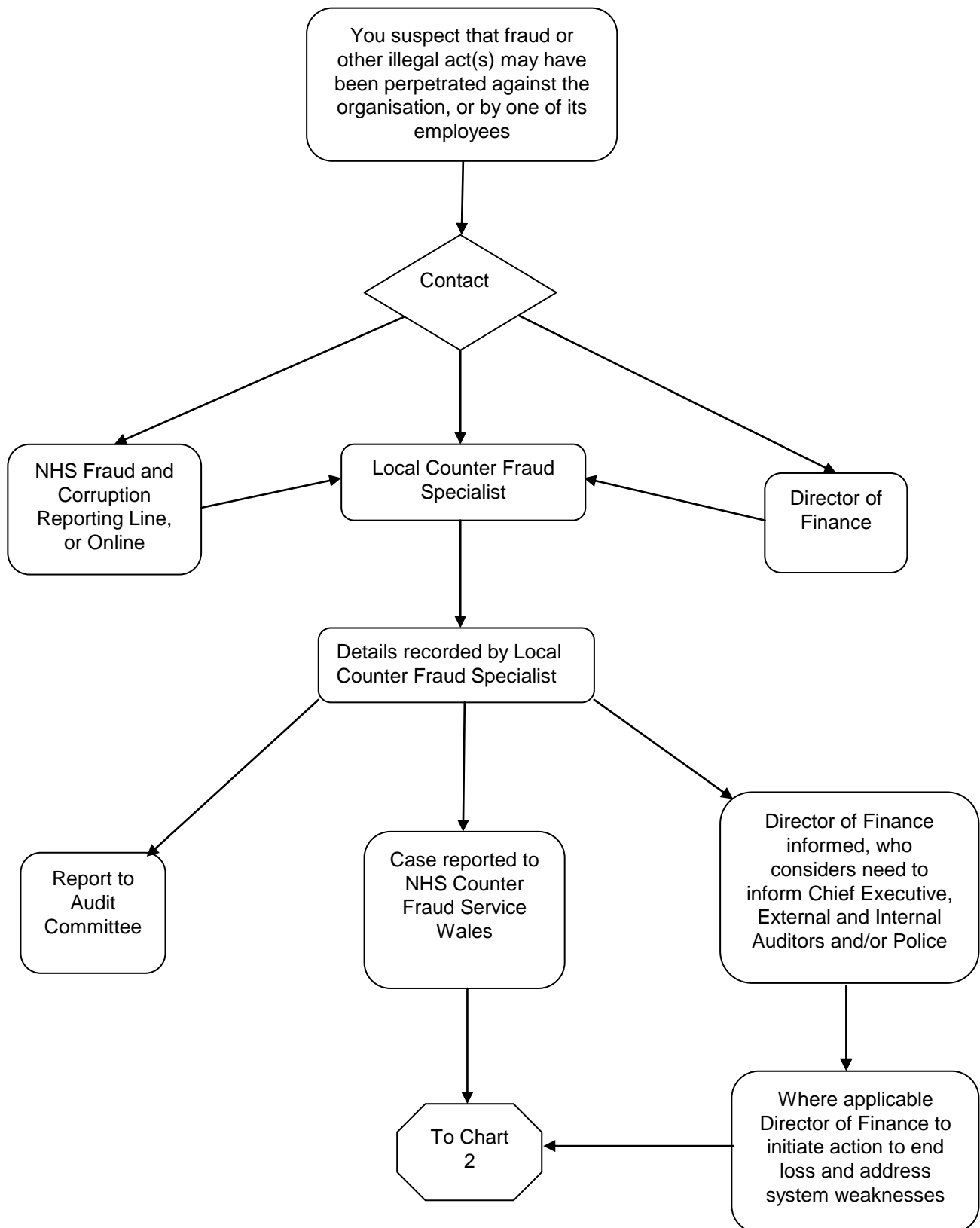


CHART 1 – REPORTING FRAUD

- 7.3.1 If an employee suspects that an economic crime has been perpetrated against the organisation, 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 the employee contact the Local Counter Fraud Specialist or Director of Finance.
 - Alternatively, employees can also 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 fraud within or affecting the NHS. It allows NHS staff who are unsure of internal reporting procedures 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.
 - Employees can also report their concerns online at www.reportnhsfraud.nhs.uk.
- 7.3.2 Anonymous letters, telephone calls, etc are also occasionally received from individuals who wish to raise matters of concern, but not through official channels. While the suspicions may be erroneous or unsubstantiated, they may also reflect a genuine cause for concern and will always be taken seriously.
- 7.3.3 If a criminal act is suspected, particularly an economic crime, it is essential that there is the earliest possible consultation with the Director of Finance or the Local Counter Fraud Specialist 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.
- 7.3.4 The LCFS will make sufficient preliminary enquiries to establish whether or not there is any foundation to the suspicion that has been raised. If the allegations are found to be malicious, they will also be considered for further investigation to establish their source.
- 7.3.5 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. The Audit Committee will receive the Local Counter Fraud Specialist activity reports on a regular basis.
- 7.3.6 Where a member of staff identifies a potential economic crime, it is LHB policy that under no circumstances should a member of staff speak or write to representatives of the press, TV, radio, or to a 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 give rise to an action for slander or libel.
- 7.3.7 Instances of theft or damage to LHB or personal property should be reported to the Police at the earliest opportunity on every occasion.

7.4 CHART 2 - MANAGING THE INVESTIGATION

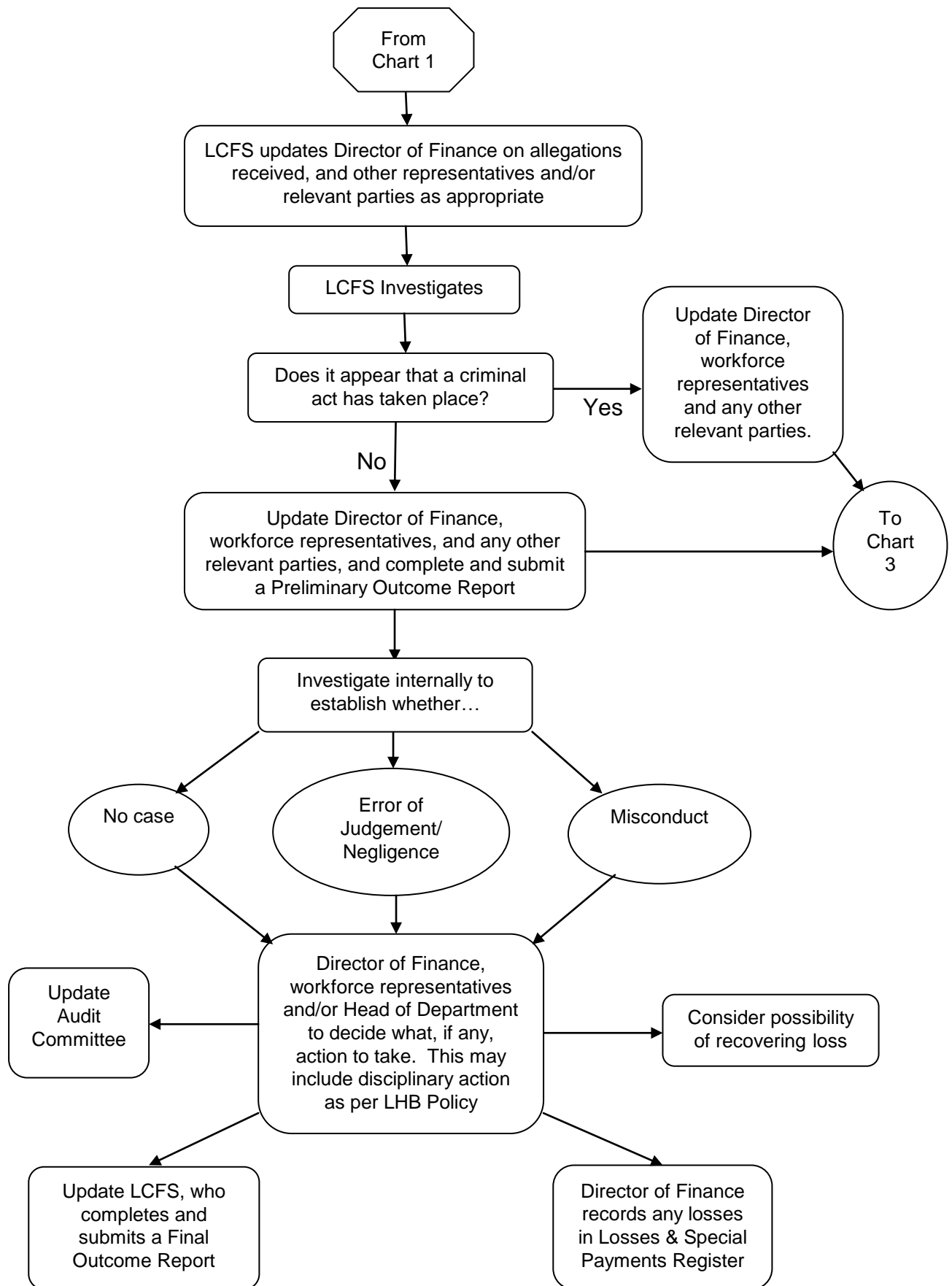


CHART 2 – MANAGING THE INVESTIGATION

- 7.4.1 Where appropriate and at the earliest possible opportunity, a conference should be convened to include the Director of Finance, workforce representatives, the Local Counter Fraud Specialist and any other party deemed appropriate in order to appraise all concerned of the allegations received.
- 7.4.2 Where there are grounds to suspect that an economic crime may have occurred, the Director of Finance will in most cases appoint the Local Counter Fraud Specialist as Investigating Officer. In cases where it is unclear whether a fraud has been perpetrated, the Director of Finance may initially request that the Head of Internal Audit (NWSSP) undertake preliminary reviews under the direction of the Local Counter Fraud Specialist. As soon as there is the slightest suspicion of criminal activity however, the Director of Finance or the Local Counter Fraud Specialist **MUST BE INFORMED**. The following is intended to be general guidance in considering the best course of action:
- (a) Immediate consideration should be given to the need to remove the person(s) from LHB premises.
 - (b) System weaknesses identified should be addressed to remove the possibility of further economic crime being committed against the LHB.
 - (c) Ensure the allegations are investigated objectively.
 - (d) Prepare background or objective statements, outlining the nature of the suspected incident.
 - (e) Specify the scope of the enquiry, and the terms of reference.
 - (f) 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.
 - (g) Implement procedures for preserving evidence.
 - (h) 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.
 - (i) Estimate and monitor the costs of the investigation (if appropriate)
 - (j) Maintain regular contact to discuss progress and the likely outcome with the Director of Finance, workforce representatives and any other relevant parties.
 - (k) If circumstances dictate, the appointment of a public relations manager should be agreed at an early stage of the investigation.
- 7.4.3 The investigation will then be progressed by the Local Counter Fraud Specialist in line with Chart 3.

7.4.4 If it appears that a criminal act has not taken place, the LCFS will complete a Preliminary Outcome of Investigation Report for the Director of Finance detailing all investigation findings, and any recommendations considered necessary to address system weaknesses highlighted. The next step should then be an internal investigation to determine the facts and what, if any, further action is needed. Broadly, this internal investigation will have one of three outcomes.

- The most serious would be where it is decided that there was gross misconduct, possibly involving dishonesty but without criminal intent. The outcome is likely to be dismissal if a member of LHB staff is involved.
- Less serious would be if it were decided that there was negligence or an error of judgement that caused the event. This is unlikely to lead to dismissal but might involve disciplinary procedures.
- Finally, it may be concluded that there is no case for an individual to answer.

7.4.5 At the conclusion of any internal investigation, consideration will also need to be given to the possible recovery of any losses identified, and whether any further action is required to improve control and prevent the event happening again. The LCFS will be notified of the final outcome, and will prepare the Final Outcome of Investigation Report for the Director of Finance.

7.5 CHART 3 - GATHERING EVIDENCE

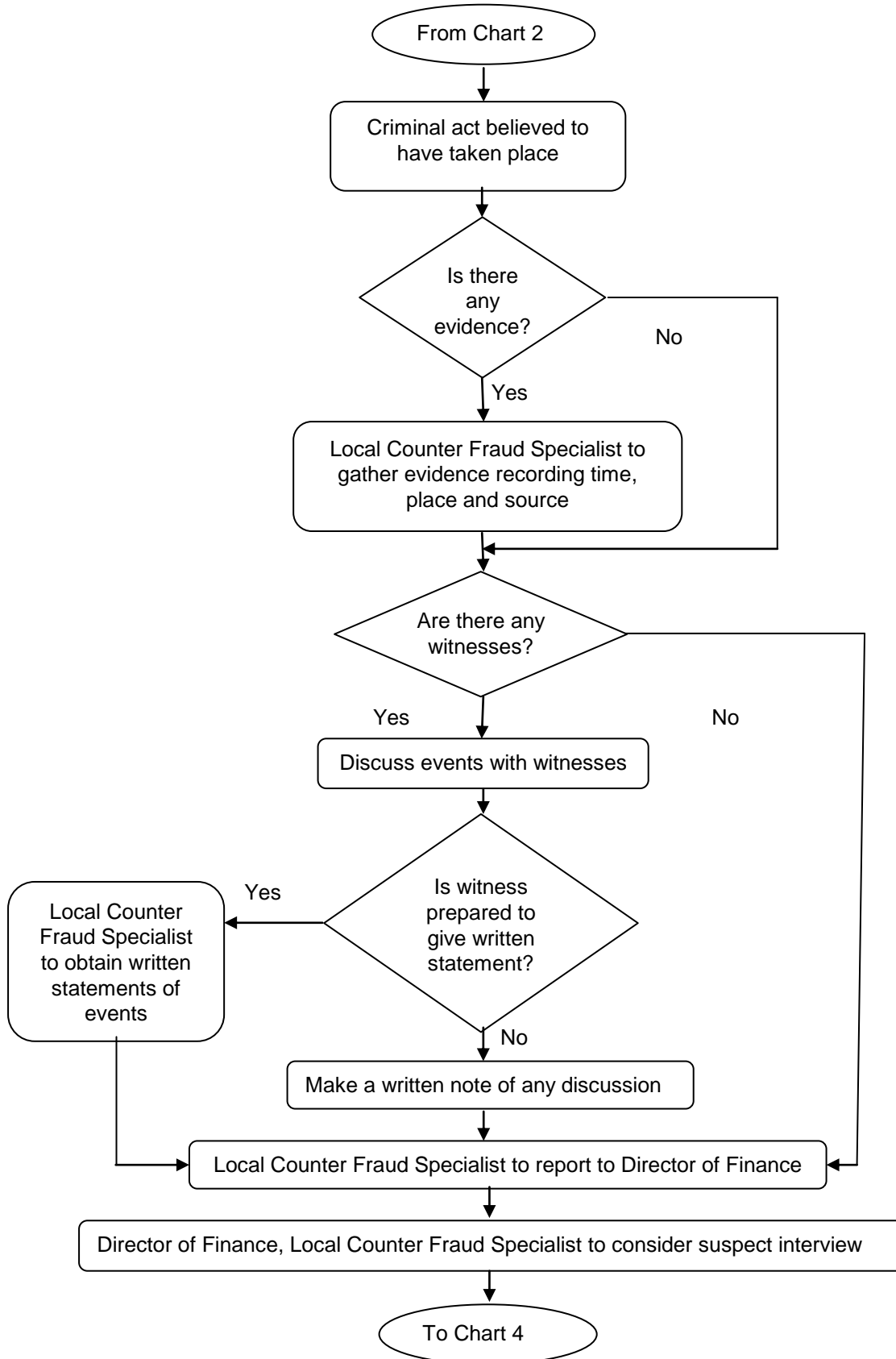


CHART 3 – GATHERING EVIDENCE

NB. THE CHART CANNOT COVER ALL THE COMPLEXITIES OF GATHERING EVIDENCE. EACH CASE MUST BE TREATED ACCORDING TO THE CIRCUMSTANCES.

Witnesses

- 7.5.1 If a witness to the event is prepared to give a written statement, the Local Counter Fraud Specialist will take a chronological record using the witness's own words. The witness should be prepared to sign the document as a true record.

Physical Evidence

- 7.5.2 The collection of evidence must be coordinated if more than one party is involved in an investigation. Evidence gathering requires skill and experience, and professional guidance should be sought where necessary. There is a considerable amount of case law concerning the admissibility of evidence.
- 7.5.3 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.
- 7.5.4 Upon taking control of any physical evidence, it is very important that a 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. Evidence on or obtained from electronic media requires a document confirming its accuracy.

Professional Advice

- 7.5.5 At any stage of the investigation the Local Counter Fraud Specialist is encouraged to consider whether advice should be sought from a professional body or Head of Department, the following are brief examples and are not exhaustive:-

- | | |
|---------------------------------|--|
| (a) Prosecuting Authorities - | Specialist Fraud Division,
Crown Prosecution Service |
| (b) Investigating Authorities - | Counter Fraud Specialist, CFS Wales, Police |
| (c) Internal Management - | Chief Executive, Deputy Chief Executive,
Director of Finance, Clinical Directors. |

Consideration of Formal Interview

- 7.5.6 The Local Counter Fraud Specialist will consider all the evidence and decide if the suspect should be interviewed. If a criminal offence amounting to fraud, corruption or bribery is suspected, the Local Counter Fraud Specialist will inform the Director of Finance.

7.5.7 Where the possible use of police powers is considered the Director of Finance shall confer with the NHS Counter Fraud Service Wales prior to referring the matter to the Police. In this consideration he/she may consult others as appropriate.

7.6 CHART 4 INTERVIEW PROCEDURE

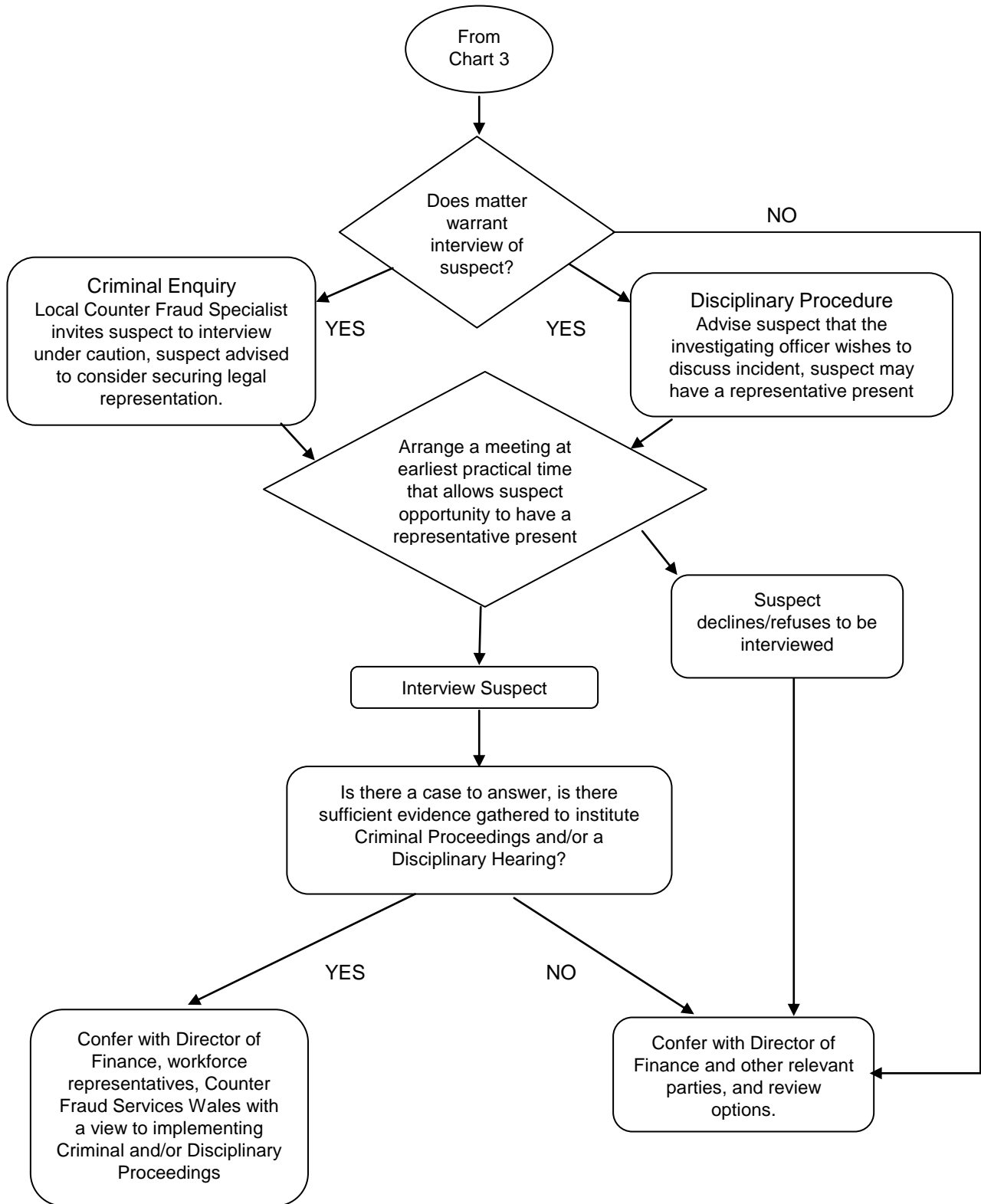


CHART 4 - INTERVIEW PROCEDURE

- 7.6.1 The requirements of PACE (Police and Criminal Evidence Act) must be considered before any interview under caution with a suspect is performed, since compliance with the Act determines whether evidence is admissible in criminal proceedings. If in doubt about the requirements of the Act it is important to take specialist advice. **Interviews under caution should only be conducted by the Local Counter Fraud Specialist.**
- 7.6.2 Following the interview, the Local Counter Fraud Specialist will review the case and decide what, if any, further investigation is required. In doing so, advice can be taken from the Director of Finance, Counter Fraud Service Wales, or any other relevant party.
- 7.6.3 Any interview undertaken as part of a disciplinary process must be performed in line with the requirements of the LHB Disciplinary Policy.

7.7 Conclusion of the Investigation

- 7.7.1 On conclusion of the investigation the Local Counter Fraud Specialist should compile a Preliminary Outcome of Investigation Report to include information under the following headings (the list is not exhaustive and should be varied and adapted to suit the circumstances of each investigation). The following format is recommended as the report should convey to the reader (who may not have been previously involved) the whole case scenario from commencement to conclusion: -
- (a) Background – the nature of the allegation, how it was received and who it was received from (if appropriate)
 - (b) Objective – The objective(s) of the investigation.
 - (c) Enquiries & Findings – To include matters such as statements taken, evidence gathered and responses received at IUC.
 - (d) Conclusions – A summary of the LCFS opinion on the outcome of the investigations as they relate to each of the allegations.
 - (e) Recommendations – Dealing with issues such as whether evidence files should be passed to Solicitors for advice on prosecution, referral for disciplinary investigation, seeking recovery, and any system weaknesses or issues highlighted.
 - (f) An Action Plan – To detail the action necessary to address any system weaknesses or issues highlighted, in order to reduce the risk of fraud re-occurring.
- 7.7.2 On receiving the Preliminary Outcome Report a conference should be convened by the Director of Finance to include all parties privy to the investigation process to discuss the recommendations of the Local Counter Fraud Specialist and decide what action, if any, should be taken.

-
- 7.7.3 Once all matters have been addressed, the outcomes will be communicated back to the LCFS who will produce the Outcome of Investigation & Concluding Report which will detail the final agreed position, including any sanctions imposed.

7.8 Involving the Police

- 7.8.1 Involvement of the Police in the investigation of economic crime within the LHB has to be sanctioned by either the Director of Finance or the Chief Executive.
- 7.8.2 The decision to involve the Police will include the following considerations:
- (a) The LHB's Standing Orders and Standing Financial Instructions
 - (b) Guidance published by the Welsh Government
 - (c) Advice received from Counter Fraud Service Wales.

8. INVESTIGATION RESOURCE OPTIONS

- 8.1 The Directions for Countering Fraud and Corruption issued to NHS LHBs by the then Welsh Assembly Government under the National Health Service Act 1977, which came into force on 13th August 2001, states that each LHB shall by 1st September 2001 nominate a suitable officer to act as its Local Counter Fraud Specialist. To comply with these Directions all incidents of Fraud and Corruption must be investigated by the LHB's Local Counter Fraud Specialist. If any other avenue is considered, this must be approved by the Director of Finance.

9. SANCTION AND REDRESS

- 9.1 The Health Board is committed to the rigorous investigation of all reported cases of potential fraud, bribery or corruption affecting the organisation, and to seeking appropriate sanctions and redress wherever possible.

9.2 Sanctions

- 9.2.1 The Health Board has put mechanisms 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 remains available throughout the process, and the application of parallel sanctions is always considered.
- 9.2.2 It is important to emphasise however 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.

9.3 Criminal Prosecution

- 9.3.1 Where evidence exists 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 bring a case to court. Potential outcomes include:

- Custodial sentence
- Suspended sentence
- Fine
- Community service order
- Police caution

9.4 Internal Disciplinary Sanction

- 9.4.1 In addition to the above, where there is evidence 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. Potential outcomes include verbal or written warnings or, where the employee's actions are considered to be gross misconduct, dismissal.

9.5 Professional Body Disciplinary Action

- 9.5.1 Where warranted, staff may also be reported to their professional body as a result of any successful investigation/prosecution undertaken.

9.6 Redress

- 9.6.1 The seeking of financial redress or recovery of losses will always be considered in cases of fraud, bribery or corruption against the Health Board.
- 9.6.2 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 way 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.

9.7 Civil Proceedings - Freezing Orders, Asset Disclosure and Tracing

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

9.7.2 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 must 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 Supreme 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 claims.

9.7.3 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.

9.7.4 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 onto cash and then purchased another asset with some or all of the sale proceeds) is known as 'tracing information'.

9.7.5 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.

9.7.6 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.

-
- 9.7.7 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.
- 9.7.8 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).
- 9.7.9 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.
- 9.7.10 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.

9.8 Criminal Proceedings - Restraint and Confiscation/Compensation

- 9.8.1 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.
- 9.8.2 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 8.7).
- 9.8.3 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.
- 9.8.4 The above notwithstanding however, Section 7(6) of POCA gives the court the discretion not to make a confiscation order if it believes that a victim has started or intends to start proceedings against a defendant, in respect of any loss connected with the conduct. In such circumstances the court could then be asked, on conviction, to exercise this discretion in order to allow the health body to pursue recovery against the restrained assets.
- 9.8.5 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 (save to the extent that the defendant can pay both orders).

- 9.8.6 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.

10 INTERVIEWS

10.1 General

- 10.1.1 An interview under caution should only be undertaken by an accredited Local Counter Fraud Specialist

If a manager needs to establish initial facts, then this should not be under caution. The manager has the right to ask an employee to account for his actions in respect of his employment. If a manager starts the interview with a caution, he/she is telling the suspect that he/she does not have to answer legitimate management questions. This may have an adverse effect on the disciplinary power to dismiss for failing to give an explanation. For this reason it is important to involve workforce colleagues before interviewing a suspect if the manager is not experienced in such situations.

- 10.1.2 It should be a gross misconduct/dismissal offence if the employee refuses to answer questions about his/her actions as an employee. If the employee knowing the criminal law refuses to answer on the grounds that he/she might incriminate himself, that is his/her right, and if he/she asks that question he/she should be told so. He/she is still dismissed.

The same situation applies to auditors, internal and external - **they should not administer a caution.**

- 10.1.3 All interviews must be conducted fairly. In particular comments such as *"if you do not tell me the truth you will get the sack"* will render any evidence obtained inadmissible under Section 78 of the Police and Criminal Evidence Act.

Interviews conducted by managers, internal or external auditors may be admissible in a criminal trial at the discretion of the trial Judge (Section 78 of the Police and Criminal Evidence Act). The question of fairness will always be a crucial point. Having said that, current criminal case law is moving towards absolute exclusion of such interviews in a criminal process. This should not deter management from carrying out an internal interview to find out what happened. It is the right of the organisation to do so.

- 10.1.4 The W&OD Department should be advised of interviews taking place and consulted, particularly for interviews of witnesses, if advice is required on the

procedure to be followed. It should be noted that investigations carried out prior to an individual being charged are open to discovery by that individual's defence.

10.2 Interview Under Caution Procedure

10.2.1 Where an interview is recorded on tape and takes place under caution the following is a summary of the procedure to be followed. This procedure should not however be regarded as authoritative and interviewers should ensure they understand the requirements of the PACE fully before initiating an interview.

10.2.2 It is important that the suspected individual is advised of the reason for requesting the interview, and told that anything he/she says may be used as evidence against him/her.

10.2.3 This verbal statement **must** be given as follows:

"You do not have to say anything. But it may harm your defence if you do not mention when questioned something which you later rely on in court. Anything you do say may be given in evidence."

It is also critical that the suspect(s) be told that he/she is not under arrest, and may leave the interview at any time.

10.2.4 The suspect must be advised he/she has a right to legal representation. In addition, if the suspect has a representative present, this person may also wish to make a written record. A tape recorder may be used for recording the interview provided this is done overtly.

10.2.5 On occasions when no tape recording facilities are available an interview may be contemporaneously recorded. Once the interview is over, the suspect should be given an opportunity to read the written record and be asked to initial any crossings out or alterations, as well as sign the bottom of each page in acknowledgment of its accuracy. (If they are unable to read, their representative, or in his/her absence the writer, should read the record back). Should the suspect decline to sign the record, a note to that effect should be made at the conclusion of writing (on the last page), signed by the writer.

10.2.6 All persons present in the interview should be listed at the header to the record, and all should sign to acknowledge the accuracy of what was said.

11. FURTHER GUIDANCE ON ECONOMIC CRIME

-
- 11.1 Further information relevant to forming a policy on the response to fraud can be found in the following

Title	Publisher	Contents
Countering Fraud in the NHS in Wales	Welsh Assembly Government	Special arrangements that have been put in place to protect the NHS from fraud and outlining the 10-year strategy for reducing fraud.
Protecting the Public Purse	Wales Audit Office	Fraud & corruption prevention, detection, responses
Fraud and Corruption Audit Manual	Wales Audit Office	Prevention and audit strategies
Opportunity Makes a Thief	Wales Audit Office	Computer abuse survey, including fraud, theft, sabotage, hacking, etc.
Guidance on Losses & Special Payments WHC (99) 33	NHS Executive	Instructions for dealing with losses and special payments including delegation limits and when to inform NHS Executive, External Auditor or Police.
The Investigation of Fraud in the Public Sector	CIPFA	Guidance for internal auditors on fraud investigation.

12. GUIDANCE TO STAFF ON ECONOMIC CRIME

-
- 12.1 As part of the LHB Board's programme to enact all the elements of current best practice in corporate governance, this document is approved by the LHB Board as outlining the LHB's policy and advice to employees in dealing with economic crime or suspected economic crime, or other illegal acts involving dishonesty or damage to property. All staff have a responsibility to protect the assets of the LHB.

12.2 Public Service Values

- 12.2.1 The three fundamental public service values underpinning NHS and all public sector work, specified by the *Code of Conduct and Accountability for NHS Boards*, are:

(a) **Accountability**

Everything done by those who work in the organisation must be able to withstand public and Welsh Government scrutiny.

(b) **Probity**

There should be an absolute standard of honesty in dealing with the assets of the NHS: 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.

(c) **Openness**

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

12.3 The LHB Board's Policy

- 12.3.1 The LHB Board is absolutely committed to maintaining an honest, open and well-intentioned atmosphere within the LHB, so as best to fulfill the objectives of the LHB and of the NHS. It is therefore also committed to the elimination of economic crime within the LHB, to the rigorous investigation of any such cases, and where economic crime or other criminal acts are proven, to ensuring that wrong doers are appropriately dealt with. The LHB will also take appropriate steps to recover any assets lost as a result of economic crime.
- 12.3.2 The LHB Board wishes to encourage anyone having reasonable suspicions that an economic crime may have been committed to report them. The LHB's policy, which will be rigorously enforced, is that no employee should suffer as a result of reporting reasonably held suspicions.
- 12.3.3 The LHB Board has therefore set in place procedures (in the form of Standing Orders, Standing Financial Instructions and procedure notes) designed to minimise the likelihood of the LHB being a victim of economic crime, a response plan to be followed in the event of suspected economic crime being reported, and these guidance notes issued to all staff.

12.4 Counter Fraud Strategy

- 12.4.1 The main aims of the Abertawe Bro Morgannwg University LHB Counter Fraud

strategy are as follows:

- (a) **The creation of an anti economic crime culture:** in which countering economic crime is the joint responsibility of all those involved in giving strategic direction, determining policy and management of services.
- (b) **The maximum deterrence of economic crime:** ensuring that the totality of measures represents the strongest deterrent possible to those perpetrating or considering perpetrating economic crime.
- (c) **The successful prevention of economic crime that cannot be deterred:** by developing the most effective measures so that if economic crime is attempted, it will fail.
- (d) **The prompt detection of economic crime that cannot be prevented:** by developing and maintaining effective controls and processes which ensure that if economic crime does occur, it will be detected promptly and referred to the LCFS for investigation.
- (e) **The professional investigation of detected economic crime:** by training and developing highly skilled professional investigators able to investigate any detected economic crime objectively.
- (f) **Effective sanctions, including appropriate legal action against those committing economic crime:** by taking appropriate legal action and applying realistic sanctions for people or organisations where an investigation reveals economic crime.
- (g) **Effective methods for seeking redress in respect of money lost:** by seeking recovery of any losses incurred through all appropriate means, ensuring that they are returned for their proper use.

12.5 Instructions to Staff

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

12.5.2 If you believe you have good reason to suspect a colleague, patient or other person or organisation of an economic crime or an offence involving the LHB, or a serious infringement of LHB or NHS rules, you should discuss it in the first instance with one of the Health Board's Local Counter Fraud Specialists:

- | | | |
|---|----------------|---------------------|
| • | Len Cozens | 01792 618806 |
| • | Zoë Whetton | 01792 517872 |
| • | Rhiannon Evans | 01792 618833 |

Alternatively, contact the Director of Finance.

12.5.3 If you are concerned about speaking to another member of staff you could ask for advice first from the NHS Fraud and Corruption Line, telephone number

0800 028 40 60. Alternatively, you can also report online at www.reportnhsfraud.nhs.uk.

- 12.5.4 Staff can also contact the charity Public Concern at Work on 020 7404 6609, who can provide additional advice on how to go about raising matters of concern in the appropriate way.
- 12.5.5 If it becomes clear that your suspicion may be justified, the Local Counter Fraud Specialist will report the matter to the Director of Finance. The LHB will then follow the fraud response plan to investigate and take appropriate action.
- 12.5.6 An employee who has exhausted all the locally established procedures, including reference to the Chairman of the employing body, and who has taken account of any advice which may have been given, might wish to consult his or her Member of Parliament in confidence. He or she might also, as a last resort, contemplate the possibility of disclosing his or her concern to the media. Such action, if entered into unjustifiably, could result in disciplinary action and might unreasonably undermine public confidence in the Service.
- 12.5.7 In view of these considerations, any employee contemplating making a disclosure to the media is advised to seek further specialist guidance from professional or other representative bodies and to discuss matters further with his or her colleagues and, where appropriate, line and professional managers. There is also the possibility that any ill-considered public statements could frustrate future legal action being taken against those thought to be guilty of any offences.
- 12.5.8 In light of the principles set out in this guidance, however, and the mechanisms that are in place for dealing with these matters, it is expected that staff concerns can be addressed and dealt with without reference to the media.
- 12.5.9 Please be aware that time may be of the utmost importance in ensuring that the LHB does not continue to suffer a loss. Further information and a copy of the fraud response plan may be obtained from the Local Counter Fraud Specialist.

13 CONFIDENTIALITY

-
- 13.1 The LHB will conform to the Public Interest Disclosure Act 1998, which gives employees protection against dismissal and other adverse action if they make complaints or public disclosures about malpractice.
- 13.2 Staff are advised that they may not have the same protection if they “*go public*” without raising the matter internally with the employer first.
- 13.3 Wherever possible, the LHB will protect the identity of any member of staff who raises a concern and who does not want his/her name disclosed. However, this may not always be possible, as any investigation may in itself reveal the source of information and/or a statement may be necessary as part of the evidence.
- 13.4 Any person raising a concern will be given as much information as possible on the outcome of the investigation, subject to constraints of the LHB’s duty of confidentiality or any other legal constraint.
- 13.5 The LHB has a duty to protect individuals and the LHB from false, malicious or vexatious expressions of concern. Disciplinary action may be taken against any member of staff who is discovered: -
- (a) To have made allegations falsely and maliciously;
 - (b) To have externally disclosed the information before using the internal procedures which have been established, or
 - (c) To have victimised employees or deterred them from raising a concern.