



NHS SCOTLAND
COUNTER FRAUD SERVICES

National Services Scotland

**PARTNERSHIP AGREEMENT
WITH HEALTH BOARDS**

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1. INTRODUCTION

1.1 Parties

1.1.1 This Partnership Agreement is between and among (1) NHS Scotland Health Boards, all National Health Boards, and all other bodies constituted pursuant to the National Health Service (Scotland) Act 1978 (as amended) (collectively referred to in this Partnership Agreement as “NHS Scotland” or “Health Boards”) and (2) NHS Scotland Counter Fraud Services (“CFS”), a part of the Common Services Agency (also known as “National Services Scotland” or “NSS”). Each Health Board has been issued with its own copy of this Partnership Agreement and, by their signature thereof, have indicated their agreement to its terms.

1.2 Functions of the Partnership Agreement

1.2.1 This Partnership Agreement (“Agreement”):

- explains the roles and responsibilities of the partners to this Agreement
- states the intention to promote a counter-fraud culture within NHS Scotland
- clarifies the types of investigations and other activities CFS will undertake in partnership with Health Boards and their staff

1.2.2 This Agreement forms a key element of the Scottish Government’s determination to prevent and reduce fraud in Scotland. In January 2008, the Scottish Government published its strategy “Strategy to Counter NHS Fraud in Scotland” and this Agreement follows the principles and guidance set out in that document. In June 2015, the Scottish Government also published its strategy “[Protecting Public Resources in Scotland – A Strategic Approach to Fighting Fraud and Error](#)” which complements and supports the 2008 NHS strategy document.

1.3 Partnership Period

1.3.1 The Agreement period will be effective from 1 April 2022 to 31 March 2025. Any changes considered necessary to the Agreement will be made in consultation with Health Boards.

1.4 Escalation Procedures

1.4.1 Any dispute arising out of this Agreement should be resolved, in the first instance, with the relevant CFS National Counter Fraud Manager. If this process is unsuccessful, the issue should be referred to the Head of Counter Fraud Services. If necessary, matters should then be escalated to the Director Primary Care and Counter Fraud Services at NHS National Services Scotland and thereafter the Director of Health Finance and Governance, Scottish Government. Disputes under these escalation procedures will be agreed in writing between both parties.

2. BACKGROUND

2.1 The original Agreement between Health Boards and CFS was issued in February 2005 (circular [HDL \(2005\) 5](#)). This is the fifth update to the original. Previous iterations were provided in circulars: [CEL 18 \(2009\)](#); [CEL 15 \(2012\)](#); [DL \(2016\) 3](#); and [DL \(2019\) 4](#).

2.2 Working with the Directors of Finance (DoFs), Counter Fraud Champions (CFCs) and Fraud Liaison Officers (FLOs), CFS provides NHS Scotland with a central resource to counter fraud, embezzlement, bribery, corruption, systematic theft and other

irregularities (hereafter referred to as 'fraud'). It holds Specialist Reporting Agency status with the Crown Office and Procurator Fiscal Service and reports criminal cases on behalf of Health Boards without recourse to any other organisation.

- 2.3 The CFS mission is to maximise health and financial impact to NHS Scotland by delivering specialist counter-fraud solutions that embed a culture where fraud is considered unacceptable. This will be achieved by the following approach:
- **Prevention** - By deterring fraud through awareness-raising and by identifying, measuring and assessing fraud risk to implement appropriate prevention control measures.
 - **Detection** – By working together with Health Boards, the wider public sector and external organisations to share information; analyse data to identify risk; and develop proactive, joined-up approaches to countering fraud.
 - **Investigation** – By investigating allegations of fraud and applying all appropriate sanctions where Health Board or other public sector monies are involved.
- 2.4 Recognising the reality that it is only through access to information that the truth or otherwise of a suspicion of fraud can be determined, CFS and the Health Boards agree to work together to attempt to overcome problems in accessing information, where appropriate, and in the greater interest of countering fraud.

3. COMPLIANCE STATEMENT - UK/SCOTTISH LEGISLATION

- 3.1 All investigations undertaken by CFS will be conducted in compliance with relevant legislation, including to the extent applicable the Criminal Procedure (Scotland) Act 2016, the Criminal Justice and Licensing (Scotland) Act 2010, the Investigatory Powers Act 2016 ("IPA"), the Regulation of Investigatory Powers (Scotland) Act 2000 ("RIP(S)A"), the Data Protection Act 2018, the UK General Data Protection Regulation (Regulation (EU) 2016/679 and 2016/680) (together referred to in this Agreement as "Data Protection Legislation" as more particularly detailed in Appendix I of this Agreement); and all relevant Codes of Practice, recognising the considerations of the Human Rights Act 1998.
- 3.2 The National Patient Exemption Checking Programme will comply with the National Health Service (Penalty Charge) (Scotland) Regulations 1999.
- 3.3 Health Boards and CFS must comply with the provisions of the Freedom of Information (Scotland) Act 2002 ("FOISA") and all relevant Codes of Practice. Therefore, all provisions of this Agreement shall be construed as being subject to, and shall not override, any Health Boards' or CFS' compliance obligations in relation to FOISA.

4 ROLES AND RESPONSIBILITIES

4.1 Health Boards

- 4.1.1 Accountable Officers are responsible for having adequate arrangements in place to counter fraud within their Health Board. In line with central guidance, these arrangements must include investigation and robust systems of prevention and detection controls to reduce the risk of fraud and contribute to the promotion of a counter-fraud culture.

- 4.1.2 All fraud impacting on the finances or reputation of NHS Scotland must be reported to CFS, regardless of the value, who the suspect or victim is, and whether or not the fraud was actual or attempted. However, the FLO, in consultation with CFS, may occasionally decide that a fraud is best dealt with by internal management action. In general, this will be on the grounds of low value.
- 4.1.3 The Accountable Officer should also report alleged losses involving patients' funds to CFS, where evidence exists of systematic fraud.
- 4.1.4 By signing this agreement both parties agree to adopt the Counter Fraud Standard from 1st April 2022. This Standard is a best practice approach to countering fraud. It will require iterative development over the period of this agreement to establish its optimal form. Both parties to this agreement accept that in 2022/23, the activities, outputs and outcomes from this approach will not be optimised until the Standards framework has been more fully developed over the course of this Partnership Agreement. The aim is to progressively realise the benefits of the Standard framework without disrupting the current governance and assurance arrangements in place at each Health Board.
- 4.1.5 The components of the Counter Fraud Standard are as follows:
- i. Have an accountable individual at Health Board level who is responsible for counter fraud, bribery and corruption.
 - ii. Have a counter fraud, bribery and corruption strategy.
 - iii. Have a fraud, bribery and corruption risk assessment.
 - iv. Have a policy and response plan for dealing with potential instances of fraud, bribery and corruption.
 - v. Have an annual action plan summarising key actions to manage and improve fraud resilience.
 - vi. Have annual metrics summarising what outcome achievements are sought.
 - vii. Have well established and documented reporting routes for staff, contractors and members of the public to report suspicions of fraud and bribery.
 - viii. Report identified loss from fraud, bribery, corruption, and associated recoveries.
 - ix. Have agreed access to trained investigators that meet the agreed public sector skill standard.
 - x. Undertake activity to detect fraud in high-risk areas where little or nothing is known of fraud, bribery and corruption levels, including loss measurement activity where suitable.
 - xi. Ensure staff have access to and undertake fraud awareness, bribery and corruption training as appropriate to their role.
 - xii. Have policies and registers for gifts, hospitality and conflicts of interest.
- 4.1.6 The existing Scottish Government strategy requires that Health Boards appoint a senior executive or non-executive director as their CFC. Their role is to promote an anti-fraud culture within organisations to achieve a position where fraud is considered unacceptable.

- 4.1.7 Health Boards will nominate a senior officer as FLO to liaise with CFS on all fraud related matters. The FLO will report and receive all allegations of fraud to and from CFS on the Health Board's behalf. Subject to the exceptional circumstances noted at para. 6.6.3 below, the FLO and CFS will decide the most appropriate sanction route(s) to pursue (See SG circular [CEL 11 \(2013\)](#) for updated roles and responsibilities of CFCs and FLOs).
- 4.1.8 Responsibility for any necessary actions, based on findings and recommendations from CFS, lies with Health Boards.
- 4.1.9 In addition to the best practice requirement recommended by Scottish Public Finance Manual to have a fraud policy and a fraud response plan, the Health Board requires a "Fraud Annual Action Plan" to achieve component five of the Standard. This plan outlines how fraud and fraud-risk will be managed proactively in that year.
- 4.1.9 It is recognised that some Health Boards have a specific fraud policy whilst others choose a different approach to guiding and directing actions to counter fraud. To ensure that Health Boards achieve the fourth component of the Counter Fraud Standards, noted at para. 4.1.5, this Agreement includes a default 'Fraud, Bribery and Corruption Protocol' (model fraud policy and response plan) at Appendix II. Where a Health Board has a policy and/or a response plan, these shall supersede the default protocol in this Agreement.
- 4.1.10 It is expected that the FLO shall be the appropriate person to take responsibility for distributing all fraud reports and other communications from CFS, to appropriate recipients within the Health Board. Depending on the circumstances, Health Boards may wish to nominate other persons to carry out this action, but such persons should be conversant with the necessary fraud procedures, before doing so.
- 4.1.11 All Health Boards are required to provide a secure environment and method of communication for staff, practitioners, suppliers and patients to report suspected fraud in compliance with the Public Interest Disclosure Act 1998. This will be consistent with the Whistleblowing Policy (see NHS 'Once for Scotland' website) and should be clearly outlined to staff through intranet guidance and staff leaflets.
- 4.1.12 Further information is also available on the [Independent National Whistleblowing Officer](#) website.

4.2 National Services Scotland (NSS) (as Managing Health Board)

- 4.2.1 Where NSS' Practitioner Services (PS) identifies potential fraud in another Health Board through the application of its internal control systems, it will simultaneously notify the Health Board and CFS and will assist with discussions to determine the best way forward in accordance with this Agreement.
- 4.2.2 All directed surveillance and CHIS (covert human intelligence sources) work is carried out under RIP(S)A, and is subject to audit by the Investigatory Powers Commissioner's Office. The Investigatory Powers Commissioner's audit may be seen as assurance to Health Boards, and NSS, that CFS is conducting directed surveillance and carrying out CHIS appropriately. NSS will not be informed of any directed surveillance or CHIS activities pertaining to other Health Boards. However, the Chief Executive NSS will receive the Investigatory Powers Commissioner's audit reports, which directly affect CFS's reasons for authorising surveillance, in respect of the proportionality and necessity of such authorisations and the performance of CFS in its tasks. CFS will be responsible to the Chief Executive (NSS) for any necessary action in respect of those reports.

4.2.3 The Service Auditor appointed to review the work done on behalf of NHS Scotland by PS, will carry out any necessary audit of CFS's work in relation to patient exemption checking. The patient exemption checking work will provide assurance to Health Boards from NSS that the exemption fraud work is being carried out according to the protocol forming part of this Agreement.

4.2.4 CFS undertakes quality assurance checks as per its standard operating procedures.

4.3 Counter Fraud Services

4.3.1 CFS will support Health Boards to manage their fraud risks by finding, measuring, risk-assessing and reducing their fraud loss and promoting a counter-fraud culture. The aim of this work is to ensure that NHS funds intended for patient care are used for patient care.

4.3.2 CFS will provide support and facilitation for the DoFs, FLOs and CFCs in their work.

4.3.3 The role of CFS, in partnership with Health Boards, is to:

- engage with experts to assess programmes and processes to identify fraud risks and mitigation;
- support the creation of a Fraud Annual Action Plan that summarises key actions to improve capability, activity and resilience in that year;
- maintain reporting routes for staff, contractors and members of the public to report suspicions of fraud and record these referrals and allegations;
- provide trained investigators that meet the agreed public sector skill standard;
- undertake activity to try and detect fraud;
- provide a range of channels for all NHS staff to access and undertake high quality fraud awareness and training as appropriate to their role;
- investigate alleged cases of fraud by staff, patients, primary care practitioners, contractors or suppliers, third parties and to pursue all cases to an appropriate conclusion;
- where necessary, undertake directed surveillance and CHIS management in relation to fraud in accordance with RIP(S)A;
- provide specialist advice to assist in the formulation of national and UK wide counter fraud policy, regulations and guidance; and
- assist in the recovery of resources fraudulently or corruptly obtained from NHS Scotland.

4.3.4 CFS shall provide reporting in accordance with section 7 of this Agreement.

4.3.5 Although CFS forms part of NSS and is accountable to the Chief Executive NSS for governance, the Head of CFS has responsibility for providing advice, support and guidance to Health Boards in the delivery of its counter fraud services. Information concerning work carried out on behalf of a Health Board may only be disclosed out-with the confines of CFS with the express permission of the relevant Health Board. The only exception is where disclosure is necessary to the SGHSCD, or other relevant UK statutory bodies, where they require such as part of policy, operational or legal requirements. In particular, the Crown Office and Procurator Fiscal Service, police or

appointed auditor may require such information. Where appropriate, CFS will inform the relevant Health Board when information has been disclosed. The Head of CFS also has the right of access to the Director of Health Finance and Governance at Scottish Government in exceptional circumstances (e.g. those involving allegations against the most senior staff in a Health Board, or cases directly involving NSS).

4.4 CFS Oversight

4.4.1 The Director of Health Finance and Governance, Scottish Government, has a role to oversee counter fraud operational practice within NHS Scotland. This includes:

- influencing how CFS carries out its work by:-
 - agreeing matters of operational counter fraud policy;
 - endorsing the CFS Strategic Intelligence Assessment and National Fraud Risk Register - directing it to programmes, processes and activities assessed as priorities for NHS Scotland
- acting as a source of professional advice by: -
 - assisting CFS to provide an effective counter fraud service;
 - raising concerns from NHS Scotland about CFS work
- providing a strategic link with NHS Scotland to proactively enhance and promote the CFS profile.
- evaluating CFS performance on behalf of NHS Scotland.

5 INVESTIGATION-WORKING TOGETHER

5.1 After notification of an alleged fraud, consultation will take place between the FLO (acting on behalf of the Accountable Officer), appropriately nominated officers from the Health Board and CFS, to determine how best to progress any agreed investigation.

5.2 At all times, the “triple tracking” approach will be considered in discussions. Triple tracking refers to the three main fraud investigation outcomes available; pursuit of criminal, disciplinary and recovery sanctions. All investigations will be undertaken on behalf of the Accountable Officer and formal communication and reporting structures and timetables will be established.

5.3 Where investigations identify that a criminal offence has been committed and that a sufficiency of evidence exists, the appropriate Procurator Fiscal must be notified. Therefore, CFS will be under a duty to take the case forward and to report those facts of which it is made aware, on the Health Board’s behalf, to the Crown Office and Procurator Fiscal Service. However, if the relevant Health Board can demonstrate, to the satisfaction of CFS, that it is not in the public interest to put a case forward for consideration by the Procurator Fiscal, then CFS may agree not to do so. In general, this will be on the grounds of low value and in all cases the Health Board must be prepared to justify such a decision to the Appointed Auditor, and CFS must also be satisfied that it can properly and adequately justify its decision if questioned by the Appointed Auditor.

5.4 Where CFS has been in contact with a Procurator Fiscal for an application for a search warrant, or Proceeds of Crime Act application etc., control of the case effectively

passes to the Procurator Fiscal, who may demand a report on the outcome to be submitted, whether or not the Health Board or CFS wish it.

- 5.5 Following consultation between the FLO and CFS, if it is determined that an investigation will be undertaken which may result in a referral of an employee for criminal proceedings, the matter will be investigated by CFS using all appropriate legal methods which may, if warranted, include surveillance.
- 5.6 Where it is agreed that no report will be made to the Procurator Fiscal, this will be discussed and agreed with the relevant Health Board, who may consider that disciplinary sanctions are appropriate, if not already commenced.

6 COUNTER FRAUD OPERATIONAL REMIT

6.1 CFS support Health Boards to counter fraud as part of its mission to embed a counter-fraud culture within NHS Scotland. This is with the aim of delivering a health and financial impact by safeguarding NHS funds for patient care. The DoF, FLO and CFC, working in partnership with CFS, play pivotal roles in achieving this mission.

6.2 CFS' operational remit is reflected in its operation structure as detailed in Appendix III.

6.3 Prevention

6.3.1 CFS deliver a comprehensive catalogue of prevention related initiatives as part of its counter fraud offering. These initiatives include:

- A portfolio of workshops for staff working in key risk areas;
- Fraud awareness and procurement fraud eLearning modules;
- Hosting live or recorded training and awareness videos on a comprehensive range of fraud and corruption topics;
- A [CFS website](#) to provide access to counter fraud guidance and toolkits;
- Delivering Fraud Risk Assessments in areas at higher risk of exploitation;
- Fraud prevention interventions to strengthen control measures in programmes, processes and activities then measure subsequent savings;
- Maintain a National Fraud Risk Register to identify the top fraud risks within NHS Scotland;
- Support Health Boards to identify and record evidence of their achievement in each component of the Counter Fraud Standard

6.4 Detection

6.4.1 CFS undertakes a range of initiatives that centre on the analysis, prioritisation and progression of fraud related allegations. CFS continues to develop an intelligence-led capability, working together across the public sector and external organisations to share information, identify risk and develop proactive, joined-up approaches to countering fraud. Detection work includes:

- Providing a confidential fraud reporting facility through the CFS website;

- Providing confidential dedicated telephone ‘fraud-hotline’ reporting facility;
- Intelligence Alerts warning of the latest methods being used by fraudsters;
- An Intelligence Assessment of threats to NHS Scotland funds and assets
- A data-analytics service focussed at programmes, processes and activities at the highest risk of fraud.
- Analysis to provide fraud measurement calculations;
- Development of specific toolkits that allow cross-comparative and trend analysis of data to identify indicators that may reveal fraud;
- Support to Local Intelligence Networks (LINs) to promote the safer management and use of controlled drugs and to share relevant intelligence which helps to identify cases where action may need to be taken in respect of controlled drugs;
- Responsibility for patient exemption checking. Fraudulent claims for exemption from NHS charges are investigated and analysed by CFS.

6.5 Investigation

6.5.1 Where fraud has been detected, CFS’ Investigation team will work with the relevant Health Board to ensure that allegations are properly pursued and appropriately enforced. An agreed list of fraud offences (Appendix IV) will be used to determine which cases should be referred to CFS for investigation.

6.5.2 Where CFS investigates a case on behalf of a Health Board, regular communications will be maintained throughout the investigation. At the conclusion, a report outlining the findings in the case will be issued. Where appropriate, a range of recommended sanctions will be included in the report. On occasions, CFS will also include counter fraud recommendations. Health Boards have a responsibility to provide a timely management response to any recommendations made in the reports. In the case of criminal prosecution, a Standard Prosecution Report will be sent directly to the Procurator Fiscal by CFS on behalf of the Health Board. In any case where there is disagreement between the Health Board and CFS over the application of the full range of sanctions that may be recommended in the CFS report, then:

- the Health Board’s Accountable Officer must submit his/her concerns to the Director of Health Finance and Governance at Scottish Government, copying the letter to the Head of CFS;
- CFS must submit its concerns to the Health Board’s Accountable Officer, copying the letter to the Director of Health Finance and Governance at Scottish Government.

6.6 Regulation of Investigatory Powers (Scotland) Act 2000

6.6.1 The use of covert surveillance or covert human intelligence sources (CHIS) by public authorities in Scotland is strictly controlled by the provisions of Regulation of Investigatory Powers (Scotland) Act 2000 (RIP(S)A). The Common Services Agency is a named authority under RIP(S)A. Director of P&CFS and the Head of CFS may authorise directed surveillance and the use of CHIS’s in respect of activities affecting NHS Scotland. (See [HDL \(2003\) 30](#) Regulation of Investigatory Powers (Scotland) Act 2000), [CEL 40 \(2010\)](#) Regulation of Investigatory Powers (Scotland) Act 2000 and [SSI 2014/339](#) the Regulation of Investigatory Powers (Authorisation of CHIS) (Scotland) Order 2014).

- 6.6.2 Pursuant to and in terms of [HDL \(2003\) 30](#) all cases of potential fraud against NHS Scotland (as listed in Appendix IV) must be referred to CFS. Where appropriate, CFS will authorise and conduct directed surveillance and the use of CHIS on behalf of Health Boards.
- 6.6.3 On the grounds of the health and safety of its employees and its duty of care for any CHIS, should CFS require to use its powers under RIP(S)A, it will not inform the relevant Health Board until after the directed surveillance, or covert human intelligence source work, has been completed. The exceptions would be where covert surveillance equipment requires to be installed or where CCTV is being utilised for the purpose of a specific investigation, in such a manner likely to result in the obtaining of private information about a person and otherwise than by way of an immediate response to events or circumstances, which would be done with the cooperation of the FLO.
- 6.6.4 Where Health Boards are considering the use of directed surveillance or the use of CHIS in cases which do not involve fraud (falling out-with the remit of CFS) in respect of public safety or the prevention of disorder, or for the purposes of protecting public health, then they should contact the appropriate public body as outlined in [HDL \(2003\) 30](#). This will normally be Police Scotland. However, CFS may be able to assist the relevant Health Board in certain instances (for example a theft of property).
- 6.6.5 In such non-CFS cases, Health Boards should consult their Data Protection Officer to ensure that all surveillance (including CCTV and monitoring of employee emails/internet usage) and other activities, is carried out in accordance with Data Protection Legislation and all relevant Codes of Practice.

7. REPORTING

- 7.1 CFS will issue a Quarterly Report to all Health Boards, summarising new and current cases and highlighting new types of frauds. Quarterly figures on Patient Exemption Checking will be included, as will reports on initiatives undertaken to promote and raise awareness of countering fraud. CFS will also produce an end-of-year review of its activities, which will summarise its year's work.
- 7.2 Health Boards will be kept fully informed, through their FLO, about individual investigations by regular updates and will be consulted regarding all major decisions.
- 7.3 For detailed reporting timetables refer to Appendix V.

8. PERFORMANCE REVIEW MEETINGS

- 8.1 A timetable of annual Performance Review Meetings will be established between CFS and Health Boards. The following key personnel should be present; Director of Finance, FLO and CFC. Health Boards may also wish to include the Medical Director and other representatives from; Human Resources, Primary Care, Staff Side and Audit. At these meetings all aspects of CFS' performance will be reviewed.
- 8.2 An annual Customer Satisfaction Survey will also be undertaken to assess the level of satisfaction with the service provided by CFS. The findings of the survey will be disseminated to Health Boards and other interested parties.

The terms of this Agreement are agreed below by [insert name of signing body]

.....

Signed on behalf of [Health Board]

Date:

DATA PROTECTION LEGISLATION

1. DEFINITIONS AND INTERPRETATIONS

- 1.1 In this Agreement the following expressions shall, unless otherwise specified or the context otherwise requires, have the following meanings:-

“Collected Personal Data”	means any and all Personal Data collected by CFS in connection with its roles and responsibilities (other than the Shared Personal Data), and which may comprise the same categories of information in respect of the same categories of Data Subject as is relevant to Shared Personal Data, as well as information relating to fraudulent and/or criminal activity;
“Controller”	shall have the meaning given in the UK GDPR;
“Data Loss Event”	means any event that results, or may result, in unauthorised access to Personal Data held by the CFS or any Sub-processor under or in connection with this Contract, and/or actual or potential loss and/or destruction and/or corruption of Personal Data in breach of this Contract, including but not limited to any Personal Data Breach;
“Data Protection Legislation”	means (i) the UK GDPR and any applicable national implementing Laws as amended from time to time; (ii) the DPA 2018 to the extent that it relates to the Processing of Personal Data and privacy, including Processing ; and (iii) any other Law in force from time to time with regards to the Processing of Personal Data and privacy, which may apply to either party in respect of its activities under this Contract;
“Data Subject”	shall have the meaning given in the UK GDPR;
“Data Subject Request”	means a request made by, or on behalf of, a Data Subject in accordance with access and other rights granted to a Data Subject pursuant to the Data Protection Legislation in respect of their Personal Data;
“DPA 2018”	means the Data Protection Act 2018;
“DP Losses”	means all liabilities and amounts, including all: <ul style="list-style-type: none"> a) Direct Losses; b) costs and expenses relating to reconstitution and/or correction of the Personal Data and any and all records comprising the same; and c) to the extent permitted by Applicable Law:

	<ul style="list-style-type: none"> (i) administrative fines, penalties, sanctions, liabilities or other remedies imposed by a Supervisory Authority; and (ii) compensation to a Data Subject ordered by a Supervisory Authority;
“GDPR”	means the United Kingdom General Data Protection Regulation (Regulation (EU) 2016/679);
“Information Commissioner’s Office”	means the United Kingdom’s Supervisory Authority;
“Law”	means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, by-law, regulation, order, regulatory policy, mandatory guidance or code of practice, judgement of a relevant court of law, or directives or requirements with which the Health Board and/or CFS is bound to comply;
“Permitted Recipients”	means the Crown Office and Procurator Fiscal Service, relevant professional regulators and/or Police Scotland, as appropriate;
“Personal Data”	shall have the meaning given in the UK GDPR;
“Personal Data Breach”	shall have the meaning given in the UK GDPR;
“Processing”	shall have the meaning given in the UK GDPR and the terms “Process” and “Processed” shall be construed accordingly;
“Processor”	shall have the meaning given in the UK GDPR;
“Shared Personal Data”	<p>the Personal Data shared by the Health Board with CFS in connection with this Agreement, and which may comprise the following categories of information relevant to the following categories of Data Subject:</p> <ul style="list-style-type: none"> a) name, address, telephone number, email address, date of birth, payroll information and related bank account details, HR record information, including but not limited to PVG scheme information, disciplinary information, sickness and other absence information and suspected fraudulent acts for or involving current and former employees of the Health Board; b) name, address, telephone number, email address, D.O.B., CHI number, next of kin information, physical and mental health information as for current and former service users of the Health Board; and c) name, address, telephone number, email address and bank account details for current and former primary care practitioners, suppliers or contractors to the Health Board.

	For the avoidance of doubt, the above categories of information, and of Data Subject, are for illustrative purposes only and are not intended to comprise an exhaustive list. The parties acknowledge that Personal Data comprised of other categories of information and other categories of Data Subject may form part of the Shared Personal Data, depending on the facts and circumstances of a Specific Investigation;
“Specific Investigation”	means a fraud investigation relating to a specific Data Subject or specific group of Data Subjects;
“Supervisory Authority”	shall have the meaning given in the UK GDPR; and

2 DATA PROTECTION AND CONFIDENTIALITY

- 2.1 In order to enable CFS to perform its roles and responsibilities outlined in this Agreement, Health Boards shall disclose the Shared Personal Data to CFS.
- 2.2 Health Boards and CFS anticipate that they shall be Joint Controllers in respect of the Processing carried out in connection with this Agreement.
- 2.3 Health Boards and CFS acknowledge and agree that CFS’ roles and responsibilities fall within the meaning of “law enforcement purposes” in terms of the DPA 2018 and that, as a result:
- 2.3.1 the Processing is being carried out on the basis of Article 6(e) of the UK GDPR and, where the Processing involves any special categories of Personal Data, the Processing is then also carried out on the basis of Article 9(g) of the UK GDPR and Section 35(5) and paragraph 1(b) of Schedule 8 to the DPA 2018; and
- 2.3.2 the Data Subject rights granted pursuant to Articles 13 to 22 of the UK GDPR are restricted as per Chapter 3 of Part 3 of the DPA 2018.
- 2.4 Health Boards and CFS shall at all times throughout the Partnership Period, Process the Shared Personal Data and, where relevant, the Collected Personal Data in compliance with the Data Protection Legislation and shall comply with all the obligations imposed on a Controller under the Data Protection Legislation in relation thereto.
- 2.5 Each party shall:
- 2.5.1 make generally available such fair processing information as is required pursuant to Chapter 3 of the Part 3 of the DPA 2018;
- 2.5.2 process the Shared Personal Data only for the purposes outlined in this Agreement; and
- 2.5.3 where relevant, Process the Collected Personal Data only for the purposes outlined in this Agreement.
- 2.6 Following completion of the Specific Investigation, CFS shall, at its sole discretion based on its knowledge, expertise and experience:

- 2.6.1 pass all or any part of the Shared Personal Data and the Collected Personal Data to the Permitted Recipients; or
- 2.6.2 advise the Health Board that the content of the Shared Personal Data and the Collected Personal Data is insufficient to warrant the passing of all or any part of the Shared Personal Data and the Collected Personal Data to the Permitted Recipients but that alternative disciplinary sanctions and/or civil action may be appropriate,
- 2.6.3 and, in addition, CFS may at the Health Board's written request provide a copy of the Collected Permitted Data to the Health Board, subject always to any obligations that CFS may have at Law to the contrary, and provided always that the Health Board can demonstrate to CFS that it has a lawful basis to receive and Process a copy of the same in terms of the Data Protection Legislation. Retention of the Shared Personal Data and/or Collected Personal Data by CFS and the Health Board following completion of the Specific Investigation shall be in line with each party's respective retention policy.
- 2.7 Health Boards and CFS shall assist each other in complying with all applicable requirements of the Data Protection Legislation insofar as such requirements relate to the Agreement, and in particular, each party shall:
- 2.7.1 consult with the other party about any fair processing notices made generally available to Data Subjects in relation to the Shared Personal Data and the Collected Personal Data;
- 2.7.2 promptly inform the other party about the receipt of any Data Subject Request, and where appropriate provide a copy of such Data Subject Request to the other party, which such Data Subject Request will be handled by:
- (a) the Health Board insofar as it relates to the Shared Personal Data; and/or
- (b) CFS insofar as it relates to the Collected Personal Data,
- subject always to paragraph 2.7.3;
- 2.7.3 provide the other party with reasonable assistance in complying with any Data Subject Request;
- 2.7.4 not disclose or release any Shared Personal Data or Collected Personal Data in response to a Data Subject Request without first consulting the other party, wherever possible;
- 2.7.5 be responsible for responding to communications addressed to that party from any Supervisory Authority or other regulatory authority and for participating in consultations with any Supervisory Authority or other regulatory authority at their instance relating to the Processing of any Personal Data carried out in connection with this Agreement but that party shall, where appropriate, keep the other party informed in relation to same;
- 2.7.6 notify the other party without undue delay on becoming aware of any breach of the Data Protection Legislation;
- 2.7.7 notify the other party without undue delay on becoming aware of any Data Loss Event, and to the extent that such Data Loss Event requires to be notified to the Information Commissioner's Office, such notification shall be made by:

- (a) the Health Board insofar as it affects only the Shared Personal Data; or
 - (b) CFS insofar as it affects the Collected Personal Data or both the Collected Personal Data and the Shared Personal Data;
- 2.7.8 maintain complete and accurate records and information to demonstrate its compliance with this Appendix; and
- 2.7.9 provide the other party with contact details of its Data Protection Officer who shall be that party's point of contact and responsible manager for all issues arising out of the Data Protection Legislation.
- 2.8 In the rare circumstances where CFS is acting as a Processor for and on behalf of the Health Board, if, and to the extent, that such circumstances arise, CFS undertakes to:-
- 2.8.1 only Process Personal Data for and on behalf of the Health Board in accordance with the instructions of the Health Board and for the purpose of its roles and responsibilities and to ensure the Health Board's compliance with the Data Protection Legislation.
- 2.8.2 comply with the obligations applicable to Processors described by Article 28 of the GDPR which include, but are not limited to the following:
- (a) to implement and maintain appropriate technical and organisational security measures sufficient to comply at least with the obligations imposed on the Health Board by Article 28(1) of the UK GDPR;
 - (b) to act only on documented instructions from the Health Board (Article 28(3)(a)). CFS shall immediately inform the Health Board if, in its opinion, an instruction infringes any Data Protection Legislation;
 - (c) to ensure that personnel authorised to process Personal Data are under contractual confidentiality obligations to (Article 28(3)(b));
 - (d) to take all measures required by Article 32 of the UK GDPR in relation to the security of Processing (Article 28(3)(c));
 - (e) to respect the conditions described in Article 28(2) and (4) of the UK GDPR for engaging another Processor (Article 28(3)(d));
 - (f) to assist the Health Board, by appropriate technical and organisational measures, insofar as this is possible, to respond to Data Subjects Requests (Article 28(3)(e));
 - (g) to assist the Health Board, as appropriate, to ensure compliance with the obligations pursuant to Articles 32 to 36 of the UK GDPR taking into account the nature of the Processing and the information available (Article 28(3)(f));
 - (h) to maintain a record of Processing activities as required by Article 30(2) of the GDPR;
 - (i) to allow the Health Board to audit CFS' compliance with the obligations described in this Paragraph, on reasonable notice subject to the Health Board complying with all relevant health and safety and security policies

of CFS and to provide the Health Board with evidence of its compliance with the obligations set out in this Paragraph;

- (j) to obtain the prior agreement of the Health Board to store or Process Personal Data outside the United Kingdom and where CFS does Process Personal Data, to do so in compliance with the UK GDPR; and
- (k) to notify the Health Board as soon as practicable after becoming aware of Personal Data Breach.

2.9 Each party (the “Indemnifying Party”) shall indemnify the other party (the “Indemnified Party”) against all DP Losses suffered or incurred by the Indemnified Party arising out of or in connection with any breach of the Data Protection Legislation by the Indemnifying Party, its employees or agents, provided that the Indemnified Party gives to the Indemnifying Party prompt notice of such claim, full information about the circumstances giving rise to it, reasonable assistance in dealing with the claim and sole authority to manage, defend and/or settle it.

2.10 The provisions of Paragraph 2.7.9 shall not affect the liability of either party to any Data Subject.

2.11 CFS will keep the business of the Health Board and related documents confidential. Information provided to CFS will only be disclosed to parties authorised by the Health Board or as required to any other authorised body or as otherwise permitted under the terms of this Agreement.

FRAUD, BRIBERY & CORRUPTION PROTOCOL (MODEL POLICY & RESPONSE PLAN)

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

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1. INTRODUCTION

- 1.1 A basic principle of public sector governance is the proper use of public funds. This makes it important for public sector employees to be aware of the risk of, and response to fraud, bribery, corruption and systematic theft (hereafter referred to as 'fraud').
- 1.2 NHS Scotland's policy on countering fraud is detailed in the "Partnership Agreement with Health Boards 2022-25". This Partnership Agreement forms a key element of the Scottish Government's determination to counter fraud against NHS Scotland. In

January 2008, the Scottish Government published its “Strategy to Counter NHS Fraud in Scotland” followed in June 2015, by “Protecting Public Resources in Scotland – A Strategic Approach to Fighting Fraud and Error”. This protocol/model policy and response plan follows the principles and guidance set out in those documents and is consistent with the Counter Fraud Standard; a set of assessed components that encourages Boards to assess; measure and manage its fraud risks in addition to finding and investigating fraud that has occurred.

- 1.3 The NHS Scotland Counter Fraud Services (CFS) was created specifically to assist all Boards in their efforts to tackle fraud and this document sets out the Board’s approach to manage fraud proactively. The Board recognises that every pound of fraud prevented or recovered means increased funding for patient care. The Board has procedures in place that reduce the likelihood of fraud occurring. These include Standing Orders, Standing Financial Instructions (SFI), operational procedures, a system of internal control and risk assessment. The Board engages CFS to promote a fraud awareness culture through a range of products and services. The Partnership Agreement 2022-25 with CFS outlines what must happen in the event of a fraud or other irregularity being discovered. The Partnership Agreement includes reference to the Board and CFS proactively detecting and investigating fraud and assessing the risk of fraud.
- 1.4 This document provides detailed direction and help to staff dealing with circumstances suspected to be fraud. In these circumstances the Board has immediate discussions to agree with CFS how to progress each case appropriately. CFS will always consider taking forward relevant cases that have the potential for criminal prosecution. Staff need to be aware of this and of their responsibilities when a criminal prosecution is not appropriate.

2. PUBLIC SERVICE VALUES

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

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

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

Openness: The organisation’s activities should be sufficiently public and transparent to promote confidence between the organisation and its patients, and the public.

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

3. THE BOARD'S POLICY

- 3.1 The Board is committed to the NHS Scotland Counter Fraud Strategy and to the public service values outlined above.
- 3.2 The Board will maintain an honest and open culture and encourages anyone having suspicions of fraud to report this immediately. All staff can be confident they will not suffer in any way as a result of reporting suspicions held in good faith i.e. suspicions other than those that are raised maliciously.

4. ROLES AND RESPONSIBILITIES

4.1 Chief Executive

- 4.1.1 As the Accountable Officer, the Chief Executive has the responsibility for countering fraud in its broadest terms. Accountable Officers are required to have adequate arrangements in place for the deterrence, prevention and detection of fraud. In line with central guidance, these arrangements should encompass robust systems of preventative and detective controls to reduce the risk of fraud and contribute to the promotion of an anti-fraud culture. The Accountable Officer should also use CFS to assist in the investigation of actual, and alleged, losses involving patients' funds where evidence exists of systematic fraud.
- 4.1.2 In October 2008 the SGHSCD issued circular CEL 44 (2008) noting that all frauds must be reported to CFS regardless of who the suspect or victim is, whether it is prosecuted criminally, civil action or by discipline, or whether the fraud was actual or attempted. The Accountable Officer must ensure that systems are put in place to notify CFS of all reports of fraud, so that complete records of fraud against NHS Scotland are available.

4.2 Director of Finance and Fraud Liaison Officer

- 4.2.1 The Chief Executive may delegate the day-to-day responsibility for the management of individual cases to the Board's Director of Finance. In the case of general theft, the Director of Finance will report the suspected crime directly to Police Scotland to carry out the appropriate investigations. In cases of systematic thefts, the Director of Finance will report to CFS, who will advise if police involvement is necessary.
- 4.2.2 From 1st April 2022, this Board has adopted the 12 components of the Counter Fraud Standard, which designates the Director of Finance to manage the risk of fraud, bribery and corruption.
- 4.2.3 This Board has nominated a senior officer as the Fraud Liaison Officer (FLO). The FLO will liaise with CFS on all matters relating to fraud and will cooperate with reactive and proactive enquiries. The FLO has a duty to report, on behalf of the Board, all allegations of fraud and receives reports from CFS. The FLO and CFS agree whether the allegation will be taken forward for potential criminal prosecution, and/or as a disciplinary or civil case. See SGHSCD circular CEL 03 (2008) for roles and responsibilities of Counter Fraud Champions and Fraud Liaison Officers. Further guidance on how these roles support the Counter Fraud Standard will be available from April 2022.
- 4.2.4 Where CFS is undertaking a case on behalf of the Board no further action shall be taken by the Director of Finance, the Fraud Liaison Officer, the Human Resources

Director, or any other Board officer without consultation with CFS. This is necessary to maintain the integrity of the investigation.

4.3 Counter Fraud Champion

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

4.4 Counter Fraud Services

4.4.1 CFS will work with the Board to promote an anti-fraud culture among: staff; patients; FHS practitioners; contractors; suppliers; and the wider public who will come to regard fraud against NHS Scotland as unacceptable. CFS delivers prevention, detection and investigation services and provides support and facilitation for the FLO and the CFC in their work.

4.4.2 Where CFS investigates a fraud, a final report outlining the case will be issued to the Board. Where appropriate, a range of recommended civil or disciplinary actions and an estimate of potential civil recoveries will be included in the report. CFS may include counter fraud recommendations in reports to mitigate the risk of re-occurrence. The Board has a responsibility to provide a management response to CFS recommendations. For criminal prosecutions, CFS send a Standard Prosecution Report directly to the Procurator Fiscal on behalf of the Board.

4.4.3 Where there is disagreement between the Board and CFS over the application of the full range of sanctions that may be recommended by CFS, then:

- the Board's Accountable Officer must submit his/her concerns to the Director of Health Finance and Governance, Scottish Government, copying the letter to the CFS Head of Service
- CFS must submit its concerns to the Board's Accountable Officer, copying the letter to the Director of Health Finance and Governance, Scottish Government

4.4.4 The CFS Head of Service has a professional responsibility to the Accountable Officer of the Board for the conduct of investigations on their behalf and the provision of advice. Information concerning work carried out on behalf of a client body may only be disclosed out-with the confines of CFS with the express permission of the Board, except for disclosure to the SGHSCD, other UK health counter fraud bodies where relevant, the appointed auditor, or the Crown Office and Procurator Fiscal Service or Police. The CFS Head of Service also has the right of access, in exceptional cases (those involving allegations against the most senior staff in the Board), to the SGHSCD Finance Director.

4.5 Human Resources working with Counter Fraud Services

4.5.1 The Human Resources Director shall ensure that those involved in the investigation are advised in matters of employment law and in other procedural matters, such as disciplinary and complaints procedures, as required.

4.6 Employees Responsibility

- 4.6.1 All staff have a duty to protect the assets of the Board, which include: information, physical property and cash. The Board will maintain an honest and open culture and wishes to encourage anyone having suspicions of fraud, embezzlement, bribery, corruption or systematic theft to report them without delay.
- 4.6.2 The reporting routes for NHS staff should be clearly defined in staff induction documentation and awareness raised for existing staff. The reporting routes should be detailed in patient information leaflets, contract documentation and CFS publicity material. In all such internal and external documentation, it should be noted that time may be of the utmost importance to prevent further loss to the Board.

4.7 **National Fraud Initiative (NFI)**

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

4.7.2 **The NFI allows:**

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

4.7.3 This Board participates in this exercise which is carried out every two years.

5. **PUBLIC INTEREST DISCLOSURE ACT 1998**

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

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

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

6. **REGULATION OF INVESTIGATORY POWERS (SCOTLAND) ACT 2000**

6.1 The use of covert surveillance or covert human intelligence sources by public authorities in Scotland is strictly controlled by the provisions of RIP(S)A. The use of these investigatory powers is detailed at section 6.6 et seq, of the Partnership

Agreement. Where appropriate CFS will authorise and conduct directed surveillance and the use of CHIS on behalf of the Board.

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

7. SCOTTISH GOVERNMENT HEALTH AND SOCIAL CARE DEPARTMENT (SGHSCD) GUIDANCE

- 7.1 The SGHSCD guidance on financial control procedures when criminal offences are suspected is provided within the Partnership Agreement, specifically:
 - a) in cases of theft, where there are reasonable grounds for thinking that an item of property, including cash, has been stolen, the Finance Director should report the details to the police.
 - b) in cases of suspected fraud, embezzlement, bribery and other financial irregularities, preliminary enquiries should be carried out with as much speed as possible. Restitution of funds or property is not a reason for withholding information or failing to report the facts. At the very early stages of a case of suspected fraud, which includes: fraud involving patient funds, CFS must be contacted to discuss whether the case will be taken forward criminally and/or through discipline and/or civil recovery. Where a fraud may also affect other NHS bodies, the Board should inform the Scottish Government so that this information may be disseminated appropriately.
 - c) where the nature of the alleged offence or the position of the person involved could give rise to national or local publicity, the SGHSCD should also be informed.
 - d) where preliminary investigations suggest that prima facie grounds exist for believing that a criminal offence has been committed, the Board and CFS must decide if criminal prosecution would be an appropriate route. The norm is that all such cases should be considered for reporting to the procurator fiscal, however where both the Board and CFS agree it is not in the public interest, generally on the grounds of low value, the case may be taken forward through discipline and/or civil recovery routes.
 - e) the Board and CFS must be prepared to justify all such decisions to the appointed auditor. Breach of trust must be taken into account in these considerations, i.e. being of low value does not automatically preclude a case from being notified to the procurator fiscal. Where there is doubt as to whether

- a prima facie case for prosecution exists, CFS will contact the Crown Office and Procurator Fiscal Service to obtain advice.
- f) in any event, CFS should be contacted before any overt action is taken which may alert the suspect and precipitate the destruction or removal of evidence or the dissipation of assets. This includes taking action to stop a loss or tighten controls.
 - g) where Boards and CFS are undertaking pro-active exercises in areas of known fraud risk, officers and directors must provide assistance and such data as is required to ensure the success of these operations.

8. THE REPORTING FRAMEWORK – CEL 44 (2008)

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

9. REPORTING SUSPICIONS

- 9.1 A list of the different types of offences that can occur can be found at Appendix IV of the Partnership Agreement.
- 9.2 Allegations of fraud, embezzlement, bribery, corruption or systematic theft may come from a number of sources and may be received anonymously. The subject of the allegation may be in respect of any person or corporate body, including: employees; primary care contractors; suppliers; and patients
- 9.3 Where the subject of the suspected fraud, embezzlement, bribery, corruption, or systematic theft is not an NHS colleague, then the suspicions should be reported in writing to the Head of Department. It is important to capture all information that is readily available regarding the suspect(s) for reporting to the FLO. The Head of Department and the FLO will then discuss and agree whether a report to CFS and/or Police Scotland is appropriate.
- 9.4 **Suspected Employee Fraud**
 - 9.4.1 Where an NHS employee is suspected, in the first instance any suspicions should be reported to the relevant Head of Department. If the suspected incident involves the Head of Department then suspicions should be reported in writing to a more senior officer or directly to the Board's Fraud Liaison Officer (FLO). In the absence of the FLO, the Board must have an appointed Deputy.
 - 9.4.2 For incidents involving Executive Directors of the Board, the FLO should contact the Chair of the Board or the Chair of the Audit Committee. It is important to act quickly when suspicions are reported in order to minimise further losses to the Board. This also allows action to be taken to secure evidence required for any future proceedings; criminal or disciplinary.
 - 9.4.3 Contact should then be made with the Director of Human Resources (HR) immediately, before proceeding with any internal investigation. Where the suspicions relate to a potential criminal offence, the FLO will formally refer matters

on a CFS1 form to CFS, who will consider the referral and determine if a criminal investigation is justified. CFS, the FLO and the Director of HR should then discuss and determine whether/when to initiate suspension of the employee pending an enquiry.

9.5 In All Cases

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

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

9.5.3 In any event, Counter Fraud Services should be contacted before any overt action is taken which may alert suspects and precipitate the destruction or removal of evidence. This includes taking action to stop a loss or tighten controls.

9.5.4 Inform and consult the Finance Director and the Chief Executive at the first opportunity in all cases where the loss may exceed the delegated limit (or such lower limit as the Board may determine) or where the incident may lead to adverse publicity.

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

10. CFS PROTOCOL

10.1 The decision on whether a referral is taken on by CFS as a criminal investigation is normally taken following correspondence between the FLO and CFS and usually involves an initial meeting to consider the available evidence. If the referral involves an employee of the Board, then HR involvement in any initial meeting is crucial to avoid any conflict with ongoing or future disciplinary processes. The officer leading the criminal investigation will be Counter Fraud Specialist from CFS. The circumstances of each case will dictate who will be involved and when.

10.2 On any matters related to the investigation of fraud, and acting on the Director of Finance's behalf and as stated in the Board's SFIs, Counter Fraud Services staff is entitled without necessarily giving prior notice to require and receive:

- a) Access to all records, documents and correspondence relating to any financial or other relevant transactions, including documents of a confidential nature (in which case they shall have a duty to safeguard that confidentiality), within the confines of the data protection act.
- b) Access at all reasonable times to any land, premises or employees of the Board;
- c) The production or identification by any employee of any cash, stores or other property of the Board under an employee's control; and
- d) Explanations concerning any matter under investigation.

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

11. POLICE SCOTLAND

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

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

12. SUSPENSION OF EMPLOYEE

- 12.1 Following consultation between the Board and CFS, it may be appropriate to limit the investigation to disciplinary/civil recovery action. If so, the following outline the actions to be followed:
- a) Where the allegation refers to an employee, the Finance Director will seek advice from the Human Resources Director on suspension or redeployment.
 - b) Where the allegation is in respect of a director, the Chair of the Audit Committee/ Chair of the Board will involve the Human Resources Director, where appropriate, in making any decision regarding suspension.
- 12.2 Where consultation between the Board and CFS conclude that a criminal investigation is required, the FLO/ Finance Director/ Human Resources Director should consider whether/when to suspend the employee(s) subject to the investigation, pending the outcome. This should be carried out in line with the Once for Scotland policies.
- 12.3 Suspension is not a disciplinary sanction but a neutral act and would normally only be considered where the behaviour alleged would, if proved, constitute an offence of a serious nature and time is needed to investigate the circumstances further. When taking action to suspend an employee it is important to communicate the reason for taking the action, against which there is no appeal.
- 12.4 The employee should be advised that they will receive full pay whilst on suspension, and should not return to the workplace nor contact their colleagues about the allegations until such time as allowed to do so by their employer.
- 12.5 Where there is to be an investigation by CFS, the Board must consult CFS prior to suspending any member of staff. CFS will not take any part in the decision as to whether or not suspension is appropriate, but instead would seek to be in a position to make recommendations about the timing of the suspension in the interest of securing the integrity of any potential evidence.

- 12.6 For example, if the alleged offence concerned conduct within NHS premises, such as payroll fraud or improper application of tendering regulations, and the decision to suspend had been taken, CFS may recommend that the individual be escorted from the premises in order that evidence could not be tampered with. If, however, the allegation concerned the theft of property, CFS may recommend that it is more appropriate to reasonably delay the suspension in order to enable the searching (under warrant) of the home or premises of the individual concerned.

13. GATHERING EVIDENCE

- 13.1 This policy cannot cover all the complexities of gathering evidence. Each case must be progressed based on the individual circumstances of the case, taking professional advice as necessary (including advice from CLO where deemed appropriate). Where CFS decides not to pursue a criminal investigation, for whatever reason, the recommended next steps may involve an internal, Board-level investigation. In these circumstances it is important that the gathering of evidence is carried out in a methodical and consistent way.
- 13.2 Depending on the situation, and after discussion and agreement between the Board and CFS, there may be occasions when CFS can undertake preliminary enquiries on behalf of the Board.
- 13.3 The Board/CFS Partnership Agreement outlines where it may be possible to utilise some of the work carried out by CFS in a criminal case for disciplinary or civil recovery proceedings. This will always be subject to approval from the relevant Procurator Fiscal and may require advice from the Central Legal Office. Subject to those caveats, the work done by CFS, particularly with respect to witness and suspect interviews, could reduce the work required by the Board's investigation team.
- 13.4 At all stages of the investigation, any discussions or interviews should be documented and, where feasible, agreed with the interviewee.
- 13.5 If a witness to the event is prepared to give a written statement, it is best practice for an experienced member of staff, appointed by the HR Directorate, to take a chronological record using the witness's own words. The witness should sign the statement only if satisfied that it is a true record of his or her own words. In circumstances where the witness is the Fraud Liaison Officer then the "role" of Fraud Liaison Officer moves to the next most senior member of staff.
- 13.6 Physical evidence should be identified and gathered together (impounded) in a secure place at the earliest opportunity. An inventory should be drawn up by the investigating officer and held with the evidence. Wherever possible, replacement or new document etc. should be put into use to prevent access to the evidence. If evidence consists of several items, for example a number of documents, each one should be tagged with a reference number corresponding to the written record. Care with evidence gathering is important, as that which may initially be treated as a discipline case could become a criminal prosecution at a later stage.
- 13.7 Where evidence is believed to be held on: individual computers; laptops; smartphones; tablets; camera systems; or on a business network, CFS will provide advice in the first instance to the Board on developing a plan to secure digital evidence. Great care should be taken where there is a need to secure copies of files, emails and logs, and strict procedures must be followed to allow this type of evidence to be admissible in prosecution proceedings. Accessing this information

prior to securing a forensic image may be considered by a Court as tampering with the evidence and it may be ruled inadmissible.

14. DISCIPLINARY PROCEDURES

14.1 The Board investigation should cease when:

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

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

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

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

15. THE LAW AND ITS REMEDIES

15.1 Criminal Law may impose sanctions on the suspect for causing loss, while civil law may assist the Board to recover its loss.

15.2 Subject to CFS obtaining approval from the Procurator Fiscal concerned, there is no reason why the criminal prosecution and civil process cannot be taken at the same time if the evidence supports such action.

15.3 Where recovering a loss is likely to require a civil action, it will be necessary to seek legal advice from the Central Legal Office (CLO). Such action should only be progressed under the authority of the Finance Director.

15.4 The following is a brief description of the most common civil law remedies:

15.4.1 Monies had and received

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

- 15.4.2 **Interest**
The pursuer may be entitled to interest on the amount lost, and there are claims for interest under court rules and statute.
- 15.4.3 **Damages for deceit**
A defender may become liable to the pursuer for damages arising out of the act, and if the pursuer can establish this liability they are entitled to be put back into the position that they would have been in if the act had not been committed. If successful, this claim may result in the award of damages beyond mere recovery of assets stolen.
- 15.4.4 The Board/CFS Partnership Agreement outlines where it may be possible to utilise some of the work carried out by CFS in a criminal case for civil recovery proceedings. This will always be subject to approval from the relevant Procurator Fiscal and may require advice from CLO.
- 15.4.5 In Civil Law, the method of concealment (in the case of fraud) is unlikely to be a key factor in the value of compensation or the drafting of the statement of claim.
- 15.4.6 Criminal Law allows for the restraint (i.e. freezing) and confiscation of the proceeds of crime, following conviction. CFS, in conjunction with the police and Crown Office and Procurator Fiscal Service, will always press to have the full effect of the Proceeds of Crime Act 2002 applied whenever it is appropriate. Additionally, a Compensation Order in favour of the victim can form part of the sentencing by a Sherriff but cannot be instigated by CFS, nor prompted by the Procurator Fiscal.

16. DISCLOSURE OF LOSS

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

- 16.5 Guidance on losses and special payments is provided in Circulars 1985(GEN)17 and HDL (2005) 05. The delegated limits for approving the writing off of losses and special payments are detailed in the Board's Standing Financial Instructions.
- 16.6 It will be important for the Finance Director to consider actions to be taken to minimise the risk of a potential repeat of the incident. The actions will include a review of lessons learnt and completion of a risk assessment by internal audit or consideration of a Fraud Risk Assessment by CFS. Any lessons learned should be disseminated to the Service through the internal audit network or by using the CFS bulletins.

17. MEDIA COVERAGE

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

18. CONTACTS

Counter Fraud Hotline – 08000 15 16 28 (powered by Crimestoppers)

Counter Fraud Services

01506 705200 (general enquiries)

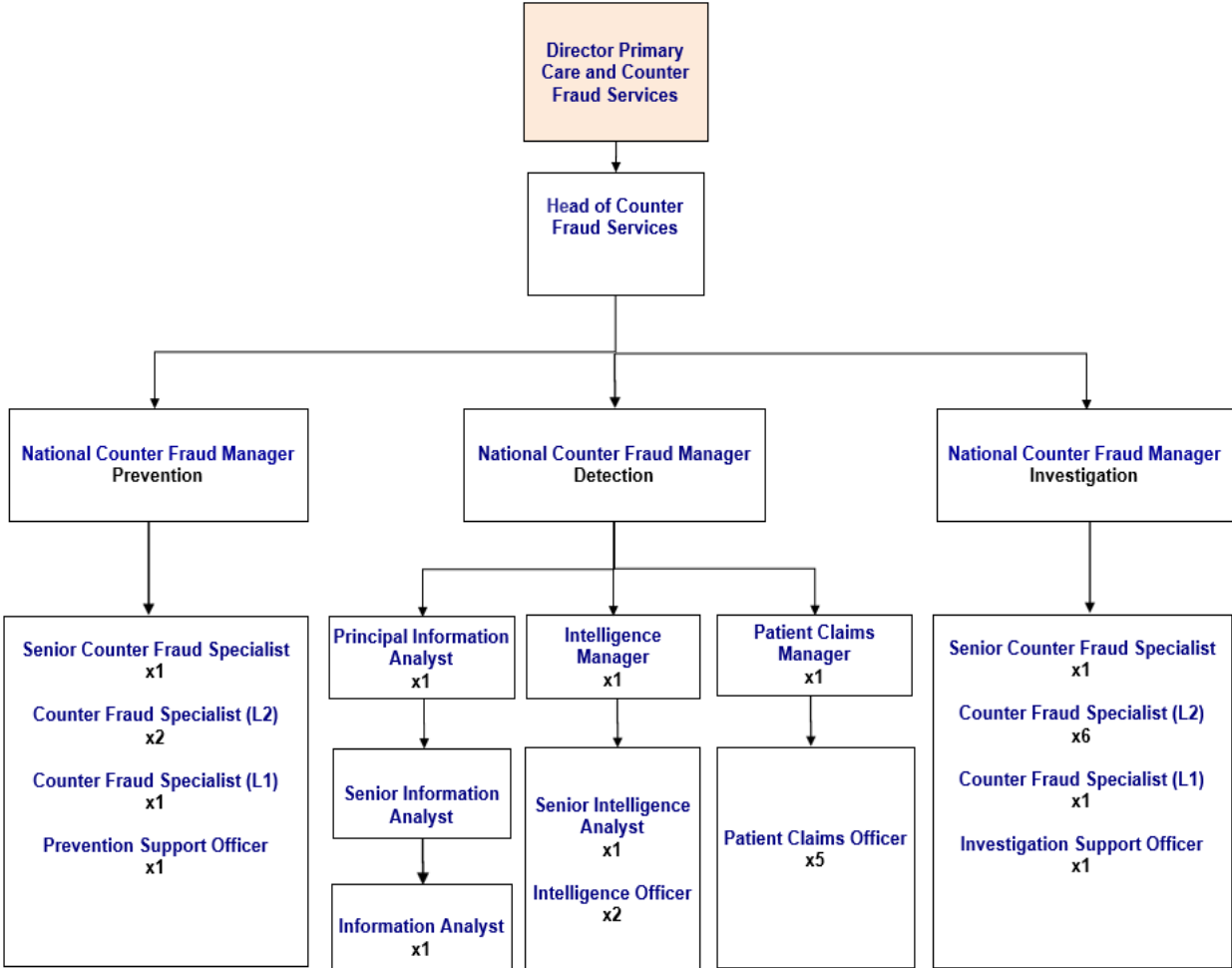
www.nss.nhs.scot/departments/counter-fraud-services/

Independent National Whistleblowing Officer

0800 008 6112

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

NHS Scotland Counter Fraud Services Organisation Chart



1. LIST OF FRAUD OFFENCES

1.1 Depending on the nature of business and the products or services provided, NHS employees may have the opportunity to commit fraud. There are numerous types of fraud that can be perpetrated by staff and some examples are given below. This list is not exhaustive.

- **Dishonest action by staff to obtain a benefit** e.g. sick pay fraud, false expenses, false overtime, embezzlement of cash or goods and procurement fraud.
- **Account fraud** e.g. fraudulent account transfer to employee account, fraudulent account transfer to third party account and fraudulent account withdrawal.
- **Employment application fraud** e.g. false qualifications, false references or use of false identity.
- **Unlawfully obtaining or disclosure of personal data** e.g. fraudulent use of customer/payroll data, modification of customer payment instructions and contravention of IT security policy with intent to facilitate the commission of a criminal offence.
- **Unlawfully obtaining or disclosure of commercial data** e.g. contravention of IT security policy with intent to facilitate the commission of a criminal offence.

1.2 The remit of CFS relates to fraud including theft, dishonesty, deception and/or manipulation of documents/records where there is a loss to NHS Scotland property or funds. The following is a list of offences which CFS may investigate following the consultation process between the Health Board FLO and CFS.:

- **Fraud** (A false pretence – a false pretence by word of mouth, writing or conduct, and
An inducement - induce someone to pay over monies/hand over goods, and
A practical result - that the cheat designed had been successful to the extent of gaining benefit of advantage, or of prejudicing, or tending to prejudice, the interests of another person)
- **Embezzlement** (is the felonious appropriation of property (i.e. a thing or things belonging to someone) that has been entrusted to the accused with certain powers of management or control)
- **Forgery and uttering** (is the making and publishing of a writing feloniously intended to represent and pass for the genuine writing of another person. Uttering means the tendering or presenting of a document)
- **Bribery and Corruption** The Bribery Act 2010 makes it a criminal offence to take part in 'active' or 'passive' bribery or to fail to prevent bribery in an organisation:
 - Active bribery (section 1 of the Act) makes it an offence for a person to offer, give or promise to give a financial or other advantage to another individual in exchange for improperly performing a relevant function or activity.

- Passive Bribery (section 2 of the Act) makes it an offence for a person to request, accept or agree to accept a financial or other advantage in exchange for improperly performing a relevant function or activity.
 - Corporate offence (section 7 of the Act) states that an organisation may be liable if it fails to have adequate procedures in place to prevent bribery.
- **Theft** (the felonious taking or appropriating of property without the consent of the rightful owner or other lawful authority) of NHS property or funds with a high value or where a series of thefts has been identified.

In exceptional circumstances, or in the interest of NHS Scotland, but always as directed by the relevant Accountable Officer, CFS may investigate the alleged commission of any of the fraud offences where there is no direct loss to NHS Scotland funds or property but the loss is in connection with the delivery of services under the National Health Services (Scotland) Act 1978.

REPORTING REQUIREMENTS

Reports provided by CFS

Period of Reporting	Report Content	Data Used to Produce Report
Monthly	Intelligence cases and operational update	Ongoing summary of intelligence cases and operations
Quarterly	<p>Patient Exemption Checking System – cumulative quarterly report commencing with the quarter ending June</p> <p>Cumulative quarterly referral, intelligence case and, operational report commencing with the quarter ending June</p>	<p>A count of all cases processed through PECS in the reporting quarter including all carried forward cases from the previous quarter</p> <p>A summary of all referrals, intelligence cases and operations processed in the reporting quarter, including intelligence alerts issued</p>
Annually	<p>Patient Exemption Checking System – report for period April to March</p> <p>End of Year - Annual referral, intelligence case and operational report for period April to March</p> <p>Staff engagement metrics</p>	<p>PECS cases processed during the financial year including cases recommended for write off with the reason and details of recoveries</p> <p>A summary of all prevention, intelligence, detection and investigation work carried out</p> <p>Data from TURAS and event registration records.</p>

Reports provided by Health Board

Period of Reporting	Report Content	Data Used to Produce Report
Annually	Fraud Standard Statement	Outcomes from in-year counter fraud activities