

# Sanctions and Redress Policy

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## VERSION CONTROL

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## VERSION HISTORY

<b>Date</b>	<b>Version</b>	<b>Comment / Update</b>
30/11/2017	0.1	New policy created following NHS Protect Quality Assessment June 2017.
10/01/2018	1.0	CRCCG and WNCCG Governing Bodies approved the adoption of the Policy.

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# 1. Introduction

- 1.1 Warwickshire North Clinical Commissioning Group and Coventry and Rugby Clinical Commissioning Group (the CCGs) are committed safeguarding their funds, and the wider NHS resources, and will fully investigate any allegations of fraud, bribery or corruption, or wrong doing committed against the CCGs as set out in the CCGs' Anti-fraud, Bribery and Corruption Policy.
- 1.2 The CCGs have a zero tolerance to fraud, bribery and corruption and will ensure that the appropriate sanctions and redress are considered and applied in response to financial crime or similar wrong doing committed against the CCGs.

# 2. Purpose

- 2.1 This document sets out the CCGs' policy for applying sanctions against individuals who have been identified as committing a financial crime or other wrong doing against the CCGs.
- 2.2 To ensure that any criminal investigation is conducted in such a way that it enables the widest range of sanctions to be available.
- 2.3 The range of available sanctions which may be pursued by the CCGs, following approval of the Chief Finance Officer, includes:
- Criminal prosecution (potentially resulting in fine, imprisonment, community penalty, confiscation and/or compensation order) or out-of-court disposal.
  - Civil action, including action to preserve assets and recover losses
  - Disciplinary action by the employing body
  - Regulatory action by a relevant professional / regulatory body.
- 2.4 Each matter will be considered individually on its own facts and merits. However, applying a consistent and thorough approach in all cases will ensure that:
- Investigations are undertaken in the most effective manner, including the gathering and assessment of all relevant material which may form evidence of fraud, bribery, corruption or related misconduct
  - The most appropriate sanction or combination of sanctions is sought where fraud, bribery, corruption or related misconduct is identified.
- 2.5 The ultimate aim of the policy is to protect the property and finances of the CCGs, to ensure that the appropriate sanctions are applied and any monies lost are recovered.

### **3. Responsibilities**

- 3.1 The CCGs' Chief Finance Officer will authorise the sanction and financial recovery to be applied, following advice from the appropriate supporting function (Anti-Fraud Lead, Human Resources Lead or CCG Solicitor)
- 3.2 The CCGs' Anti-Fraud Specialist will investigate any allegations of financial crime against the CCGs, as per the CCGs' Anti-Fraud, Bribery and Corruption Policy. Matters may be transferred to the NHS Counter Fraud Authority's National Investigations Team, the police or other investigatory body as appropriate.
- 3.3 The CCGs' Human Resource Lead will investigate any allegations of misconduct by CCG employees, as per the CCGs' Disciplinary Policy.

### **4. Applying Sanctions**

- 4.1 The outcome of any investigation may result in either criminal, disciplinary or professional / regulatory body sanction (or a combination) being applied. Deciding on which sanction(s) are applied will be dependent on the findings of the investigation undertaken and the extent of any losses to the CCGs.

### **5. Criminal Sanctions**

- 5.1 All criminal investigations will be conducted in line with the relevant criminal legislation, and advice from the Police and Crown Prosecution Service (CPS).
- 5.2 Where there is evidence of a criminal offence having been committed, the CCGs' Anti-Fraud Lead will, in conjunction with the CCGs' Chief Finance Officer, make an assessment of the evidence available and the seriousness of the offence(s), and decide whether to report the matter to the Police for investigation and submission of the case to the CPS for a decision on whether a prosecution should take place.
- 5.3 The CPS will make charging decisions in respect of all cases referred to it in accordance with the Code for Crown Prosecutors.
- 5.4 The CPS will prosecute any matters on behalf of the CCGs, and seek the most appropriate sanction from the Courts.

### **6. Disciplinary Sanctions**

- 6.1 All Disciplinary Investigations will be conducted in line with the CCGs' the Disciplinary Policy.
- 6.2 When disciplinary proceedings are brought against CCG employees the appointed Disciplinary Panel will apply the appropriate sanctions as set out in Disciplinary Policy.

## **7. Regulatory / Professional Body Sanctions**

- 7.1 When the subject(s) of any investigation (criminal or disciplinary) is a member of a regulatory or professional body the CCGs will consider if it is appropriate to also notify their regulatory / professional body of the matter.
- 7.2 When appropriate the CCGs will provide the required information to support the regulatory / professional body so that they can conduct their own investigation. The CCGs will adhere to data protection legislation when sharing information.
- 7.3 In addition, the CCGs may also report any investigation / proceedings (criminal, civil or disciplinary) to the NHS England Area Team concerning any doctor, dentist, pharmacist or optician, where it is necessary for the protection of a member of the public or is otherwise in the public interest.

## **8. Seeking Redress**

- 8.1 In addition to any criminal and disciplinary sanctions applied, the CCGs are committed to fully recovering any losses identified as a result of criminal activity or wrong doing committed against it.

## **9. Criminal Redress**

- 9.1 If, during an investigation, there is evidence that property is being accumulated as a result of fraud or similar criminal activity, the CCGs will also consider applying for a Restraint Order under the Proceeds of Crime Act 2002, to secure this property prior to a final decision on prosecution.
- 9.2 Where a prosecution is being undertaken, an order for the recovery of identified losses and any related investigation cost will always be sought as part of the criminal prosecution process.
- 9.3 When necessary following any successful prosecution the CCGs will seek to obtain a Confiscation Order under the Proceeds of Crime Act 2002, for any property identified to have been obtained via criminal activity affecting the CCGs.

## **10. Civil Redress**

- 10.1 If a criminal case is not being pursued for whatever reason, or an order for recovery of losses is not made by a court following a criminal conviction, or if the CCGs are not fully compensated following a criminal conviction, the CCGs will seek to recover any outstanding losses through civil action wherever possible and appropriate.

- 10.2 The CCGs' Chief Finance Officer will make an assessment of the finding of the investigation, and decide whether to undertake civil recovery proceedings.
- 10.3 Consideration will first be given as to the appropriateness of seeking voluntary repayment to recover the loss prior to formal legal proceedings being undertaken.
- 10.4 Where a CCG employee is involved, the CCGs will consider the following options;
- Recovery via salary deductions until the debt is met.
  - For employees who have been dismissed or have resigned, recovery via a deduction from any final salary payment due.
  - When the employee or ex-employee is a member of the NHS Pension Scheme consideration will be given to obtaining recovery of losses via National Health Service Pension Scheme regulations that relate to the recovery of losses caused by a scheme member's fraudulent acts.
- 10.5 Before undertaking any of the voluntary recovery options above, the CCGs will obtain a written agreement from the individual agreeing the terms of the recovery method and the period for the repayment to be made.
- 10.6 For external bodies or contractors, recovery should be affected by formal written agreement. An invoice will be issued and repayment plan agreed.
- 10.7 If formal recovery proceedings are deemed to be necessary, the following points will be considered before consulting the CCGs' Solicitors:
- Value of provable loss
  - The known value of any assets of the individual(s) or organisations from which recovery would be sought, including any NHS pension scheme membership
  - The likelihood of successful recovery action
  - The likely costs of recovery action, especially if any claim is disputed by the subject(s) of the claim, and a civil action is necessary to obtain a court judgement against the relevant subject(s).
  - The deterrent effect of successful recovery actions
- 10.8 The CCGs will instruct its solicitors and seek to obtain recovery using the most appropriate route, as advised by its solicitors.

## **11. Related Documents**

- 11.1 The following documents contain information that relates to this policy:
- Anti Fraud and Corruption Policy
  - Disciplinary Policy
  - NHS Protect "Applying appropriate sanctions consistently – Policy Statement"
  - NHS Protect Document "Parallel criminal and disciplinary investigations – Guidance for Local Counter Fraud Specialists"

## **12. Dissemination**

12.1 This policy will be disseminated by the following methods:

- Publication on the CCGs' websites

## **13. Review and Compliance Monitoring**

13.1 The Audit Committee will require assurance annually on compliance with the policy as part of its assurance programme.