Fraud and Bribery Awareness Seminar Board Session

April 2016
Introductions

Your Local Counter Fraud Specialists

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The Scale of the Problem

Estimated loss to UK economy from fraud: £52 billion

- Public Sector
- Private Sector
- Individuals
- Charity Sector

Estimated Fraud Loss. National Fraud Authority - Annual Fraud Indicator 2013
Prevention is Better than Cure

- Loss of confidence in the office
- Time/stress in investigating
- Adverse publicity
- Losses may not be recovered
- Effects on staff morale
What is Fraud?

‘Fraud’ can be defined as:

A dishonest action designed to facilitate a gain (personally or for another) at the expense of the Trust, its staff, patients, or the wider NHS.

The Fraud Act 2006 gives a statutory definition of the criminal offence of fraud, as classified under three main headings:

- Fraud by false representation;
- Fraud by failing to disclose information; and
- Fraud by abuse of position.
What is Fraud?

Fraud by false representation

A person commits an offence if they:

• Dishonestly make a false representation; AND

• Intend, by making the representation, to make a gain for themselves or another, or to cause a loss or to expose another to a risk of loss.

| Job applicant provides false references to secure an offer of employment | Member of staff provides false information with regards to Business interests/Conflicts of Interest |
What is Fraud?

Fraud by failing to disclose information

A person commits an offence if they:

• Dishonestly fail to disclose to another person information which they are under a legal duty to disclose, AND

• Intend, by failing to disclose the information to make a gain for themselves or another, or to cause loss to another or to expose another to a risk of loss

| Job applicant fails to disclose a criminal conviction | A member of an interview panel fails to disclose a personal relationship with an interviewee |
What is Fraud?

Fraud by abuse of position

A person commits an offence if they:

• Occupy a position in which he/she is expected to safeguard, or not to act against, the financial interests of another person;

• Dishonestly abuse that position, AND

• Intend, by means of the abuse of that position to make a gain for themselves or another, or to cause loss to another or to expose another to a risk of loss.

| Employee / Board member leaks information relevant to a particular opportunity to a provider with whom they have personal connections | An employee in Finance amends supplier bank details and redirects payment to their own account |
What is Fraud?

So, the key elements are:

- Dishonesty
- Intention
- Gain or loss

An individual can be found guilty under the Fraud Act even if the fraud hasn’t actually occurred - the key is proof of intent
Counter Fraud Assurance

- Internal Audit
- External Audit
- Policies
- Strategies
- Planned work
- Reactive capability
- Anti-Fraud and Corruption Policy
- Whistleblowing Policy
- NHS Fraud and Corruption Reporting Line
- Management oversight / Audit Committee reporting / NHS Protect

A staff member takes a patient’s bank card without their knowledge and uses it to make personal purchases.
Principles of Prevention and Detection

- Proactive counter fraud culture / “Tone at the Top”
- Strong control environment
- Clearly communicated whistle blowing arrangements
- Effective monitoring of unusual or exceptional transactions
- Management awareness and identification of fraud risk
Examples and Potential Risk Areas

**Procurement**
- Two NHS managers who masterminded a 5-year procurement fraud worth £229,000 against a health authority
- Large local authority energy procurement fraud £2million

**Bank Mandate**
- National Welsh Assembly £104k over 4 months (September 2014)
- Nest (2013) £1.4m, savers bear the cost
- NHS Mental Health Trust £1m (December 2013)

**Abuse of Resources**
- Private working in NHS Time (Ophthalmologist, treating private patients)
- Declaration of Interest - running private company during working hours, using organisation resources
- Conflict of Interest - relative’s company on supplier list, used for large scale purchases

**Payroll**
- Expenses
- Claiming for hours not worked
- Recruitment of staff
- Working elsewhere whilst on sickness absence
Why Do People Commit Fraud?

Criminology for Beginners
What Causes People to Commit Fraud?

- Pressure
- Rationalisation
- Opportunity
Example Cases

Type of Fraud:
GP Out of Hours Call Handler - payroll fraud

Background:
Received a salary of £31,205 for 2.5 years after he had left his NHS job
NFI - full time employee at two organisations

Outcome:
He was sentenced to 6 months imprisonment, suspended for 18 months and had to complete
200 hours of unpaid work
Investigation Process

- Obtain documentary/Witness evidence
- Obtain any other evidence that may assist in proving/disproving the allegation
- Discuss investigation with Area Anti Fraud Specialist (AAFS) NHS Protect
- Decision to prosecute rests with the Chief Finance Officer
- Crown Prosecution Service apply 2 stage test when deciding if prosecution should take place:
  - Is it in the public interest?
  - Is it likely that a prosecution would be successful?
- Criminal action/investigation takes priority

**All investigation must adhere to legislation:**
- Police and Criminal Evidence Act 1984
- Criminal Procedure and Investigations Act 1996 (disclosure)
Applying Sanctions

- Where there is evidence of FRAUD we will advise the Director of Finance on options for possible sanctions.
  - Criminal Prosecution; and/or
  - Civil Proceedings; and/or
  - Disciplinary Action; and/or
  - Refer to Professional Body.
## What is Bribery?

The Bribery Act 2010 came into force in July 2011.

Bribery is defined within the Act as the giving or receiving of a financial or other advantage in exchange for improperly performing a relevant function or activity.

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<tr>
<th>Offence</th>
<th>Description</th>
<th>Examples</th>
<th>Convictions</th>
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<tbody>
<tr>
<td><strong>Individuals</strong></td>
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<tr>
<td>Bribing another person</td>
<td>Offering, promising or giving a bribe in the UK or abroad</td>
<td>A staff member offering tickets to a concert to their manager in exchange for them not recording leave taken</td>
<td>Individuals could face a 10 year prison sentence and unlimited fines</td>
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<td>A contractor tendering for work at the Trust offering to pay for the staff Christmas party</td>
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<tr>
<td>Receiving a bribe</td>
<td>Requesting, agreeing to receive, or accepting of a bribe in the UK or abroad</td>
<td>Receiving a bribe to consider a lesser course of action to be taken against a member of staff or no further action at all</td>
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<td></td>
<td></td>
<td>Receiving a bribe from a job applicant to ensure they secure employment with the Trust</td>
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<td>Bribery of foreign public officials</td>
<td>Bribery of a foreign public official in order to obtain or retain business</td>
<td>Unlikely to be any exposure</td>
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<td><strong>Organisations</strong></td>
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<td>Failure to prevent bribery</td>
<td>Failure by an organisation to prevent a bribe being paid by those who perform service for, or on behalf of the organisation (&quot;Associated Persons&quot;)</td>
<td>N.B. only applies to the failure to prevent any instances of bribes being given not to any instances of bribes being received</td>
<td>Organisations could face unlimited fines and reputational damage could be significant</td>
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Corporate Bribery Example

In **2014 China fined UK pharmaceuticals firm GlaxoSmithKline $490m (£297m)** after a court found it guilty of bribery.

This follows allegations the drug giant paid out bribes to doctors and hospitals in order to have products promoted. The court gave GSK's former head of Chinese operations, Mark Reilly, a suspended three-year prison sentence and he is set to be deported. Other GSK executives have also been given suspended jail sentences.

The company is now investigating allegations of corruption in Poland, the United Arab Emirates, Lebanon, Jordan, Syria and Iraq.

Recently further whistleblowing information regarding Romanian doctors has been received where it is alleged that GlaxoSmithKline provided many international trips and made payments to them under the guise of participation in advisory boards.
Prosecutions in the UK

The Serious Fraud Office obtained its first convictions under the Bribery Act 2010 on 5th December 2014 at Southwark Crown Court.

The defendants were found to have been involved in a pension investor scam where people were encouraged to invest in a biofuel scheme that was supposed to yield huge returns. The scheme was a sham and investors were defrauded of around £23 million.

The former Director and Chief Commercial Officer was convicted of two counts under s.2 of the Bribery Act 2010 – the offence of being bribed and was sentenced to a total of 13 years.

The sales agent was convicted of two counts under s.1 of the Act – the offence of offering or giving bribes and was sentenced to a total of 6 years.
Conflicts of Interest in the NHS

All NHS bodies have a responsibility to safeguard their interests and ensure any conflicts of interest are managed appropriately.

Since the restructure in April 2013, there has been growing concern regarding conflicts of interest amongst healthcare professionals and this a main feature in public and political debate.
What are Conflicts of Interest?

‘Conflicts of Interests’ occurs when:

An individual’s ability to exercise judgement is impaired or influenced by their involvement in another role or relationship

The individual does not need to exploit their position or obtain an actual benefit - financially or non financially

If there is a potential for competing interests and/or a perception of impaired judgement or influence, this is considered as a conflict of interest

There are three main things CCGs need to remember about Conflicts of Interest:

• A perception of wrongdoing, impaired judgment or influence is as detrimental as to conflicts occurring

• It is better to assume a conflict of interest if in doubt and manage it appropriately, rather than ignoring it

• No financial gain is required for a conflict to exist
Types of Conflicts of Interest

**Direct or Indirect Financial Interest**

These occur when an individual involved in taking or influencing the decision of an organisation receives a direct financial benefit as a result of the decision made (direct) or a close relative or other key person receives a financial benefit as a result of the decision made (indirect).

| Holding shares in a private company which is likely to do business within the NHS | Research funding received by an individual | Connections with a voluntary organisation contracted to provide a service to the NHS |
Types of Conflicts of Interest

Non-Financial or Personal Interests

These occur when directors or key persons are influenced by external factors such as gaining an intangible benefit.

No financial gain is received under this type of conflict of interest.

- Awarding a contract to friends or personal business contacts
- Long standing clinical commissioner takes a decision that favours one of their well known colleagues
Types of Conflicts of Interest

Conflicts of Loyalty / Conflicts in Professional Duties and Responsibilities

This occurs when the decision maker has competing loyalties between the organisation to which they own their primary duty and another person or entity.

This loyalty to another person or entity could cause a conflict to their professional duty and judgement as they may act in a way that goes against their primary duty.

A doctor has a loyalty to the GMC but may have a family member who needs a particular treatment.
Scenario

A doctor is the chair of a local commissioning group. His wife is the clinical Director for Health PLC, a company which has developed risk stratification software designed to enable CCGs to identify vulnerable patients at risk of going into hospital and help them put measures in place to address this.

Health PLC has made an offer to provide their software to the doctor’s CCG free of charge for two years to help develop it. After the two years, the software will be offered at a discounted price due to the work in developing the software during the first two years.

Is there a conflict of interest?
Answer

Yes, there is a conflict of interest as the doctor and clinical lead are husband and wife.

The doctor should declare an interest that his wife is the clinical lead and should have no input into the decision on the project.

Things to note:

- There may not be an immediate financial gain as the first two years are free of charge; however, there will be a future gain.
- If the CCG were to accept the offer, would this be in line with the policies and procedures for working/joint ventures?
- Has the CCG considered other companies offering similar software packages?
The Importance of Declaring Interests

- Maintains confidence of the public, taxpayers
- Ensures the best decisions for the CCG are being made
Gifts and Hospitality …

**Jeremy Hunt: NHS bosses face jail over links to drug firms**

Hospitals and GP groups will be required to keep a register of hospitality and gifts from pharmaceutical firms to health service staff in a major crackdown on corruption in the NHS.

An undercover investigation by The Telegraph disclosed that senior health staff who help choose drugs for the NHS were paid to work as consultants to pharmaceutical firms keen for the health service to "switch" to their products.

Some NHS managers charged up to £15,000 to organise “advisory board” meetings for drugs companies – often in luxury hotels around the world, the investigation found.
“NHS bosses face jail over links to drug firms”

Ensconced in a five-star hotel in Baden Baden, a dozen NHS staff found themselves enjoying some of the finest hospitality the German spa town had to offer. The group of British health officials visiting earlier this month were offered expensive champagne, dinner at an exclusive restaurant and even Jacuzzis in many of their rooms.

Writing in The Telegraph today, Mr Hunt says it is “shocking” that thousands of sales reps are targeting the NHS. He says he has seen evidence that 65 reps were on site at one hospital at the same time.

Mr Hunt pays tribute to the Telegraph investigation for shedding further light onto the practice and uncovering “disturbing evidence of NHS staff and professionals, alleged to have received payment or hospitality from pharmaceutical firms and medical device manufacturers to influence NHS purchasing decisions.”
“NHS bosses face jail over links to drug firms”

“five-star hotel”
“finest hospitality”
“exclusive restaurant”
“Jacuzzis”

“NHS staff”
“expensive champagne”

“Mr Hunt”
“shocking”

“disturbing evidence of NHS staff”

“alleged to”
MANAGING CONFLICTS OF INTEREST:
REVISED STATUTORY
GUIDANCE FOR CCGs

CO-COMMISSIONING CONFLICTS OF INTEREST
AUDIT: SUMMARY REPORT

The audit identified a number of inconsistencies in the processes developed to manage conflicts of interest

- Governance arrangements, as some sites had no clearly defined processes for managing conflicts of interest breaches;
- Training arrangements, as not all audit sites had a structured conflicts of interest training programme;
- Processes to declare and record conflicts, including inconsistencies in minute taking.
What To Do If You Suspect Fraud

Please report it immediately to:

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Shelly Rai (LCFS):
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Shelly.Rai@nhs.net

Margaret Hathaway CFO:
Margaret.Hathaway@nhs.net

National Fraud & Bribery Reporting Line:
0800 028 40 60 (office hours)

Raise suspicions via the Whistleblowing Policy in line with the Anti-Fraud, Bribery an Corruption Policy
Any Questions?

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