

Memorandum of Understanding

for co-operation between

Human Resources Teams of NHSScotland

and

**NHSScotland
Counter Fraud Services**

on the deterrence, disabling, and detection of
financial crime in NHSScotland



Memorandum of Understanding for co-operation between Human Resources Teams of NHSScotland and NHSScotland Counter Fraud Services

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1. The purpose

- 1.1 It is recognised that the majority of National Health Service Scotland (NHSScotland) employees are not, or never will be involved in an alleged fraud. However there needs to be a framework to deal with these matters if and when they do arise.
- 1.2 The purpose of this memorandum is to set out an agreed framework for the co-operation and collaboration of the parties on the deterrence, disabling, detection and dealing with fraud and other irregularities in NHSScotland.
- 1.3 This document is not a binding agreement or contract. It is a statement of intent designed to promote working together and support the development of detailed working arrangements which are clear to both parties.

2. Introduction

- 2.1 It is recognised that fraud, forgery and uttering, embezzlement, theft, bribery and corruption or other irregularities (hereafter collectively referred to as "financial crime") in the NHSScotland are unacceptable. Every financial crime committed which involves NHS funds, diverts resources from its intended purpose that of patient care.
- 2.2 Financial crime in the NHS takes many forms. It can often be of low value but of high volume, but may sometimes be a high value one-off event. It can either be opportunistic or well planned and can be perpetrated by skilled clinical professionals. Financial crime involves the minority of those working or using the NHS in each area of its activity. This includes primary care contractors (dentists, doctors, opticians and pharmacists), outside suppliers as well as NHSScotland employees and professionals.
- 2.3 In an organisation with a budget of around £11 billion, even a small percentage lost through financial crime represents a very substantial figure.

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2.4 This document recognises that the Scottish Partnership Forum (SPF) is committed to working to reduce the impact of financial crime against NHSScotland. Staff organisations who are members of the SPF are:

- ❑ Community and District Nursing Association
- ❑ Unite
- ❑ Transport and General Workers Union
- ❑ Royal College of Nursing
- ❑ Unison
- ❑ British Medical Association
- ❑ GMB
- ❑ Chartered Society of Physiotherapy
- ❑ Royal College of Midwives
- ❑ Society of Radiographers

2.5 In addition to this the following professional organisations have signed counter fraud charters with NHSScotland Counter Fraud Services committing their members to working to reduce the impact of financial crime against NHSScotland:

- ❑ British Medical Association
- ❑ British Dental Association
- ❑ Optometry Scotland
- ❑ Royal College of Nursing
- ❑ Royal Pharmaceutical Society

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3. The parties

3.1 *NHSScotland Human Resources Teams*

3.1.1 Human Resources staff employed within NHS Scotland provide both a strategic and operational advisory service to managers within the service. This role encompasses a broad range of HR activity such as Workforce Planning and Development, Pay Modernisation, Partnership and Employee Relations. As a result of this role it is inevitable that HR staff will become involved in dealing with allegations of financial crime with the need to support managers and liaise with employees and staff representatives to investigate and deal with such issues in an appropriate manner. This will include taking cognizance of current employment law, PIN guidelines and relevant HR policies such as the Management of Employee Conduct.

3.1.2 It will also be necessary to take into account the provisions of the Partnership Agreement which was signed by all NHS Boards, NHS National Services Scotland and all Special Health Boards (hereafter referred to as "NHS Body/Bodies") with NHSScotland Counter Fraud Services in 2009.

3.2 *NHSScotland Counter Fraud Services*

3.2.1 The NHSScotland Counter Fraud Services (CFS) is dedicated to the deterrence, disabling, detection and dealing with financial crime within and against NHSScotland. This is based on the CFS 4 D strategy which is outlined below:

- **Deter** – By raising awareness of the impact of fraud and of the sanctions applied to those who commit such offences against NHSScotland.
- **Disable** – By improving NHSScotland's long-term capability to prevent fraud
- **Detect** – By improving sharing knowledge and intelligence about fraud, enhanced data mining and a proactive approach to countering fraud.
- **Deal with** – By investigating the most serious and harmful threats and seeking to apply all relevant sanctions

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- 3.2.2 One of the reasons Scottish Ministers set up CFS was to enable investigators trained in NHS-related financial crime to investigate NHS financial crime in place of the police, thus freeing up valuable police time. This is the reason for establishing a Memorandum of Understanding between the CFS and the Association of Chief Police Officers Scotland, which gives clear recognition that it is CFS, and not the police that will deal with NHS financial crime.
- 3.2.3 CFS has the status of a Specialist Reporting Agency, acting on behalf of the Lord Advocate. This means that CFS is empowered to report NHS financial crime cases directly to the Crown Office and Procurator Fiscal Service (COPFS) without necessarily involving the police.
- 3.2.4 CFS exists to contribute to the improvement of health and healthcare in Scotland, by providing the best possible counter fraud service to NHSScotland through the provision of a professionally accredited team proactively seeking out financial crime and undertaking criminal investigations in a nationally consistent and accountable manner. As part of its remit, CFS will promote an anti-fraud culture within the Service to change the perception of NHS financial crime as a victimless crime, thereby reducing the losses to NHSScotland.
- 3.2.5 CFS provides a comprehensive counter fraud service to deliver:
- ❑ proactive deterrence, disabling and detection of financial crime against NHSScotland
 - ❑ full and fair criminal investigations into alleged financial crime by patients, staff, contractors or suppliers
 - ❑ open access to those wishing to report financial crime
 - ❑ surveillance and covert human intelligence source management under the Regulation of Investigatory Powers (Scotland) Act 2000 (RIP(S)A)
 - ❑ provision of specialist advice to assist in the formulation of counter fraud policy and regulations
 - ❑ publicity campaigns directed to both educating patients and staff and to deterring those intent on defrauding the NHSScotland
 - ❑ the recovery of resources criminally or wrongfully obtained from NHSScotland

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- 3.2.6 The remit of CFS is to investigate to the standards required by the COPFS meaning that:
- ❑ the standard of proof is “beyond reasonable doubt” and not “the balance of probabilities” as in civil or disciplinary cases
 - ❑ each piece of evidence has to be proved (e.g. a statement will be required from the payroll manager to the effect that the employee was actually paid) with matters such as forensic and/or handwriting analysis and Data Protection Act requests taken into account.
 - ❑ In any trial under Scots law, before a person can be convicted of a criminal offence there must be corroborated evidence to prove two essential facts:- firstly, that an offence was committed and secondly, that it was committed by the accused. The burden of proving these is on the Crown.
 - ❑ To prove the guilt of an accused the prosecution must satisfy the court, beyond reasonable doubt, that:
 - ⇒ A crime has been committed
 - ⇒ The charge is relevant to the crime
 - ⇒ The evidence is competent (i.e. admissible)
 - ⇒ There is sufficient evidence to prove the case
 - ⇒ The accused has been identified as the person who committed the crime
 - ❑ If the prosecution is lacking in any of these points the prosecution case will fail
- 3.2.7 CFS, like the police and other specialist reporting agencies, has no control over timescales for cases to be heard at court.
- 3.2.8 Occasionally it may be necessary to search desks, pedestals, and lockers etc, which have been allocated to members of staff and there is the potential for HR staff to be involved in this process. The guidance given by the COPFS is that in normal circumstances the written authority of a relevant person e.g. Chief Executive, Director of Finance or nominated deputy would be sufficient to allow workspaces to be searched. However, in certain cases it might be appropriate to seek a search warrant. In circumstances where a search warrant has been deemed inappropriate, CFS’ policy is to obtain the written authority of a relevant person as described above.
- 3.2.9 If it is deemed necessary and proportionate to search desks, pedestals, lockers etc and the required written authority obtained, the search will normally be carried out by two CFS investigators in the presence of the member of staff concerned, a manager and a Staff Side representative provided this does not delay or prejudice the investigation.
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3.2.10 If in exceptional circumstances it is not possible to include the employee concerned, the search will be carried out in the presence of witnesses. These may be the employee's line manager, another appropriate manager and a Staff Side representative, again, provided this does not delay or prejudice the investigation.

4. Definition of financial crime and of Audit Scotland's role

4.1 For the purposes of this memorandum, financial crime refers to cases of suspected fraudulent activity identified in NHS Bodies involving fraud, forgery and uttering, embezzlement, theft, bribery and corruption or other irregularities. Depending on the nature of business and the products or services provided, members of staff may have many opportunities to commit financial crime. There are numerous types of financial crime that can be perpetrated by staff against their employer and some examples are given below.

- ❑ **Dishonest action by staff to obtain a benefit** e.g. working for secondary employer whilst on sick leave, 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.

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- 4.2 It is not necessary for the police, or indeed CFS, to have been involved or for financial crimes to have been proved in a court of law, for Audit Scotland to require cases to be reported by NHS Bodies to their external auditor and for auditors to report them to Audit Scotland. Audit Scotland is interested in preventing failures in systems of control in audited bodies that have led to a loss to the public purse, rather than restricting its analysis to cases that have been successfully prosecuted in a court of law.
- 4.3 Scottish Government Health Directorates (SGHD) has agreed a revised system of reporting financial crimes by NHS Bodies. CFS will be responsible for collating all information on financial crimes regardless of whether they are dealt with criminally or through the disciplinary process. In respect of disciplinary cases, this notification may be summary in nature so as not to identify the actual level of disciplinary sanction taken against the individual employee. CFS will prepare a year end report for NHS Bodies to include in their annual accounts and this information will also satisfy Audit Scotland requirements.

5. The role of external auditors

- 5.1 Auditors appointed to NHS Bodies in Scotland by the Auditor General are either staff of Audit Scotland or private firms and are required to conduct their audits in compliance with Audit Scotland's Code of Audit Practice (the Code). The Code recognises that audited bodies are responsible for establishing arrangements to prevent and detect financial crime, and that auditors are responsible for reviewing these arrangements and are required to plan their audits so that there is a reasonable expectation of detecting misstatements arising from financial crime that are material to the financial statements.

6. Auditor's right to require information

- 6.1 Under section 24 (2) of the Public Finance and Accountability (Scotland) Act 2000, for the purposes of the audit of an account under sections 21 and 22 of that Act, the auditor is entitled to:
- have access at all reasonable times to any document in the possession, or under the control, of a relevant person which the auditor may reasonably require
 - require from a relevant person any assistance, information or explanation which the auditor reasonably thinks necessary for those purposes

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6.2 Under current arrangements, appointed auditors are required to have made arrangements with their NHS Bodies to be advised of all instances of detected financial crime.

7. Responsibility of NHS bodies to deter, disable and detect financial crime

7.1 NHS Bodies have the responsibility to establish arrangements to deter, disable and detect financial crime. Under the NHS Body/CFS Partnership Agreement (“the Agreement”) NHS Bodies must refer all instances of suspected financial crime to CFS.

7.2 Under the terms of the Agreement, CFS will undertake all investigations which have the potential to be prosecuted criminally. NHS Bodies will undertake all cases which are agreed from the outset as being suitable for internal investigation and/or professional discipline and/or civil recovery.

7.3 The NHS Body and CFS may take a joint decision that it is not in the public interest to put a case forward for consideration by the COPFS. In general, this will be on the grounds of low value, or could be in the case of an employee who is being considered for rehabilitation after, for example, a drugs addiction related offence. The NHS Body and CFS may have to justify such a decision to the appointed auditor.

7.4 Criminal investigations undertaken by CFS may conclude in the production of a Standard Prosecution Report or a Subject Report for the procurator fiscal. The responsibility for reporting the case to the procurator fiscal remains with the Accountable Officer of the relevant NHS Body. However, during the course of the investigation it may be necessary for CFS to refer a case to the COPFS, in order to seek a warrant or production order. In such cases, the decision as to whether or not a criminal investigation of the case will proceed will effectively pass to the COPFS concerned.

7.5 Should it prove impossible to get sufficient evidence, CFS may take guidance from the COPFS and will keep the NHS Body informed. Based on this advice, where the NHS Body and CFS jointly decide that it is not appropriate to seek a criminal prosecution, the case will not be formally reported to the COPFS.

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- 7.6 At all stages the Accountable Officer and the FLO (and in cases involving employees, the HR lead) will be kept informed of developments on such cases, particularly those of a sensitive nature.
- 7.7 Whether or not the COPFS authorities determine that there are sufficient grounds on which to instigate criminal proceedings, it remains open to NHS Bodies to consider invoking disciplinary and other relevant procedures.
- 7.8 The results of any CFS investigation may be of considerable benefit in civil or disciplinary proceedings instigated by the NHS Body. Therefore, CFS will seek agreement from witnesses that their statements may be used for criminal, civil or disciplinary purposes. However, if the case is proceeding criminally, such statements would not be made available to the NHS Body until after the trial.
- 7.9 It is important to recognise that any internal management action must not prejudice any possible criminal proceedings. Wherever possible, CFS and NHS Body investigations will run concurrently. This will allow appropriate internal investigations to be progressed to a conclusion prior to the outcome of a more detailed criminal investigation. This recognises the need for the NHS Body to bring matters to a conclusion within a reasonable timescale and avoid unnecessary and lengthy suspensions of staff or other arrangements being in place which may be contrary to best practice and also the effective use of public monies. This agreement is with the caveat that clear and regular communication between CFS and the NHS Body is developed and maintained to ensure that the integrity of evidence is preserved. It is essential that both investigations remain entirely separate with no disciplinary findings being introduced to the criminal case and vice versa other than CFS providing copies of any documentary evidence and a list of potential witnesses including a synopsis of their evidence. In accordance with current practice NHS Bodies may, where appropriate, seek Central Legal Office advice in relation to proceeding with an internal disciplinary hearing whilst the criminal case is progressing.
- 7.10 Flowcharts outlining the possible sanctions routes are provided within Annex A at Appendix A.
- 7.11 CFS may decide to review all employee communications (witness interview request letters etc) with the relevant HR Lead with a view to ensuring that they can be clearly understood by recipients. This is likely to involve an explanation to the employee and their

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representative of the reasons why CFS investigations are so different from disciplinary investigations. An explanatory leaflet is available for any employees affected by an allegation of financial crime.

- 7.12 CFS will work with HR and staff representatives on learning and development in respect of financial crime awareness and the implications of reporting financial crime by an employee. This includes operational scenario planning and may be delivered in DVD format for easy dissemination.
- 7.13 HR Directors will, in the event of receiving information potentially relating to financial crime under their Bodies Public Interest Disclosure policy, ensure that this is passed via the FLO to CFS.

8. Agreed procedures between NHSScotland Human Resources Teams and CFS

8.1 HR Teams

8.1.1 HR Directors will consider:

- issuing a copy the MoU to all their HR staff or alternatively a copy of the guidance (see Annex A) on how to treat allegations of financial crime against an employee
- providing training and assistance to departmental managers on how to treat allegations of financial crime against an employee within available resources and under their training priorities.

8.1.2 HR Directors will:

- ensure that the FLO is notified immediately of any allegation in respect of financial crime
- provide a “lead” HR person for each case to discuss it with the FLO and CFS
- where appropriate, arrange delivery of CFS letters requesting attendance at witness interview to allow explanations to be given to facilitate the full understanding by the employee and their representative of what is involved. Alternatively CFS may advise NHS Bodies in advance that letters are being prepared in order that a similar discussion can take place at a local level involving the employee and their representative.

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- ❑ determine in what capacity CFS staff may require to be involved in an internal disciplinary investigation or disciplinary hearing (where the matter is not being taken forward criminally).

- ❑ advise CFS of the results of any disciplinary action resulting from an internal financial crime investigation to allow CFS to report this to SGHD on behalf of each NHS Body. This notification may be summary in nature so as not to identify the actual level of disciplinary sanction taken against the individual employee (e.g. Case ref 001 - £300 fraud, employee referred to NMC and given first/final written warning)

8.2 CFS

8.2.1 CFS will, through the FLO, advise the HR Lead of:

- ❑ all cases of subject employee financial crime that have been accepted for investigation
- ❑ the draft investigation timetable, providing updates and explanations of changes as appropriate
- ❑ where requested, deliver letters requesting employees to attend witness interviews to the HR lead for onward transmission
- ❑ progress on cases accepted for investigation by monthly CFS progress reports
- ❑ the results of all employee financial crime investigations undertaken on behalf of each NHS Body

8.2.2 CFS will also, through the FLO:

- ❑ where the case is proceeding criminally, and the internal process has not commenced, make available copies of productions and lists of witnesses including a synopsis of their evidence to assist the internal investigation, after the interview under caution has taken place
- ❑ where the criminal case is not being taken forward, hand over all witness statements and productions to the internal investigation
- ❑ advise HR leads of court appearance dates for suspects as well as agreeing proactive publicity statements with the NHS Body concerned
- ❑ send HR leads a copy of the draft of any report on employee financial crime in their individual NHS Body that it plans to publish so that accurate and consistent messages on financial crime in the NHS in Scotland can be given by both organisations
- ❑ produce annual statistics and share these with HR Directors

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9. Review of this memorandum

- 9.1 HR Directors and CFS agree to review this memorandum, and monitor compliance with it, on a two yearly basis.

10. Contact points

10. HR Directors and CFS agree to communicate regularly, at first instance through Lindsey Ferries for HR Directors and Peter MacIntyre for CFS.

Signed



Signed



Helen Kelly
Chair
Human Resource Directors
NHS Scotland

Peter MacIntyre
Director of Counter Fraud Services

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Annex A - Appendix A - Procedures for dealing with allegations of financial crime against employees - Flowcharts

1. Introduction

- 1.1 This Annex to the MoU for co-operation between Human Resources Teams of NHSScotland and NHSScotland Counter Fraud Services (CFS) is intended to provide practical information on how NHS Bodies HR Departments and CFS can liaise with each other in terms of managing the issues arising from allegations of financial crime against employees.
- 1.2 This Annex also provides additional information on the processes used by CFS when dealing with cases. HR staff may find this useful in terms of raising their awareness of these issues which will better equip them to deal with any queries from staff or their representatives who may find themselves involved in these processes.
- 1.3 It is the case that CFS will undertake criminal investigations into allegations of financial crime or attempted financial crime perpetrated against NHS Scotland. CFS will report all cases, where a sufficiency of evidence has been demonstrated, to the Crown Office and Procurator Fiscal Service.

1.4 *Flowcharts*

- 1.4.1 The flowcharts provided within Appendix A are intended to describe the procedures for dealing with allegations of financial crime against employees. The flowcharts detail procedures that allow for evidence gathering and collation in a manner that will facilitate informed initial decisions by those requiring to make them; be this either CFS or the NHS Body, while ensuring that evidence gathered will be admissible in any possible future criminal proceedings.
- 1.4.2 Further detailed commentary on the processes in the flowcharts is outlined in the sections below. This is provided to help raise the awareness and understanding of HR staff in relation to the linkages between CFS processes and those required under the Management of Employee Conduct Policy and employment law provisions.

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Annex A - Appendix A - Procedures for dealing with allegations of financial crime against employees - Flowcharts

2. Employee makes an allegation of financial crime against another employee

2.1 Employees are encouraged, in the first instance, to report concerns of financial crime to their line manager as per the NHS Bodies' Fraud Action Plan.

2.2 Employees who require further guidance should be referred to the Partnership Information Network (PIN) publication "Dealing with Employee Concerns".

2.3 Employees may choose to report their suspicions directly to CFS, either named or anonymously, via the:

- ❑ CFS Hotline - 08000 15 16 28
- ❑ CFS Website - www.cfs.scot.nhs.uk

2.4 In addition, Audit Scotland has issued guidance to organisations recommending what actions to take when employees suspect that financial crime is being perpetrated. Further information is available via the charity "Public Concern at Work" who would offer employees advice on how to proceed. Their contacts details are:

- ❑ Helpline - 020 7404 6609
- ❑ Website – www.whistleblowing.org.uk

2.5 *Clinical governance patient and staff safety*

2.5.1 As an NHS Body it is accepted that clinical governance, patient and staff safety are paramount. Where there are any concerns over safety issues then it will always be the case that NHS Bodies will take appropriate action informing CFS afterwards. This will not preclude CFS from undertaking an investigation, if appropriate.

2.5.2 Where safety is not an issue and an allegation of financial crime has been made against an employee, the NHS Body will discuss the matter with CFS prior to taking any further action.

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Annex A - Appendix A - Procedures for dealing with allegations of financial crime against employees - Flowcharts

2.6 *Theft*

2.6.1 Whilst it is accepted that instances of theft are generally reported and investigated by the Police, NHS Bodies should recognise that where a series of thefts has occurred, it may be appropriate to alert CFS. NHS Bodies should seek the advice of CFS as appropriate.

2.7 *Fraud Liaison Officer notified*

2.7.1 CFS welcome the opportunity to discuss any financial crime allegations at the earliest opportunity. It should not be assumed that contact with CFS will automatically result in a CFS criminal investigation being initiated. CFS has a responsibility to notify the Fraud Liaison Officer (FLO) in relation to financial crime allegations.

2.7.2 HR personnel will, in the event of receiving information potentially relating to financial crime, ensure that this is passed via the FLO to CFS, as soon as is reasonably practicable. It should be noted that NHS Bodies should report all financial crimes regardless of whether restitution of funds or property has been offered by the member of staff.

2.7.3 Should CFS receive an allegation direct it will be reported to the appropriate FLO within two working days of notification to CFS. It will be the case that the FLO will involve HR as appropriate.

2.8 *No initial action should be taken which may alert the subject employee*

2.8.1 At this stage, CFS will request that the NHS Body does not initiate internal processes and that the subject employee is not informed of the allegations against them. This is vital to ensure that evidence is not hidden, destroyed or covered up. This is why it is essential that CFS is contacted where instances of suspected financial crime are discovered. As stated previously, clinical governance staff and patient safety issues take precedence over financial crime allegations. In these circumstances, it may be necessary to alert the subject employee with notification to CFS afterwards.

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Annex A - Appendix A - Procedures for dealing with allegations of financial crime against employees - Flowcharts

2.9 *Financial crime allegation initial referral meeting*

2.9.1 After receipt of an allegation CFS will liaise with the relevant NHS Body to discuss and agree how the financial crime allegation will be taken forward. Where multiple allegations and employees are involved it may be appropriate to arrange an initial referral meeting.

2.10 *Decision made not to seek a criminal prosecution*

2.10.1 If a joint NHS Body and CFS decision is made not to seek a criminal prosecution, the case may be dealt with by the NHS Body's own staff, with advice from CFS where necessary. Regardless of this or of the way an alleged offence is investigated, it is the responsibility of CFS to maintain records of all such incidents, detailing subject, location, dates, value and final outcomes. Therefore it is the responsibility of the relevant NHS Body to report any internal outcomes to CFS. This report may be summary in nature so as not to identify the actual level of disciplinary action taken against an individual employee.

2.11 *Unable to establish which body investigates*

2.11.1 If there is a difference of opinion as to which body should investigate the case, the Accountable Officer will have the final decision. It should be stressed that all investigations will be undertaken on behalf of the Accountable Officer.

2.12 *CFS to investigate to gather regulatory body evidence*

2.12.1 There are occasions, in exceptional circumstances, when agreement is reached for CFS to investigate to gather regulatory body evidence, where a criminal investigation has been discounted.

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Annex A - Appendix A - Procedures for dealing with allegations of financial crime against employees - Flowcharts

3. CFS may require to undertake initial enquiries

3.1 In most instances it will be necessary for CFS to undertake initial enquiries to establish:

- ❑ if there is any substance to the allegation;
- ❑ the systems in place and how these were breached;
- ❑ the extent of the financial crime activity and actual value of the alleged loss.

3.2 Assistance may be sought from the FLO and/or the HR lead in helping with these enquiries. These initial enquiries will assist to determine which body should investigate the case.

3.3 *Subject employee must not be informed*

3.3.1 There may be instances where at this stage of the process it is agreed with the NHS Body that no action to inform the subject employee, under the PIN Management of Employee Conduct Policy, should be taken. This is vital to ensure that evidence is not hidden, destroyed or covered up.

4. NHS Body internal investigation appropriate

4.1 Initial enquiries may establish that a CFS investigation is not appropriate. In these instances all information and evidence gathered by CFS will be passed to the NHS Body.

4.2 Any internal investigation will then be taken forward in line with Employment law, PIN guidelines and relevant HR policies such as the Management of Employee Conduct, as appropriate.

4.3 If at any time during the internal investigation further significant evidence of financial crime is uncovered, CFS should be consulted to determine what should happen in light of this new information.

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Annex A - Appendix A - Procedures for dealing with allegations of financial crime against employees - Flowcharts

5. CFS criminal investigation appropriate

5.1 Where a case has the potential to be prosecuted criminally, CFS will lead the investigation on behalf of the NHS Body. This will not preclude the NHS Body taking disciplinary and/or civil action; however that should only occur following discussion with CFS, and in some cases with the agreement of the relevant Procurator Fiscal. NHS Bodies can also access the Central Legal Office (CLO) for advice as appropriate in these situations.

5.2 *No action initiated under the PIN Management of Employee Conduct Policy*

5.2.1 Once it is decided that a CFS criminal investigation is appropriate, no action under the PIN Management of Employee Conduct Policy, should be initiated at this stage. This includes **not** informing the subject employee of the allegations against them. Indeed no further action should be taken by the FLO, HR lead or any other NHS Body staff without prior consultation with CFS.

5.3 *CFS/HR lead*

5.3.1 HR Directors will nominate a "lead" HR person for each case. The main duties of this role will include liaison with CFS to facilitate the effective progression of the case.

5.3.2 CFS will, at the earliest opportunity, nominate a "lead" Investigator for each case who will be the main point of contact with the HR "lead" and FLO.

5.4 *Initial case meeting*

5.4.1 It may be appropriate to arrange an initial case meeting between CFS, HR, FLO and the line manager to consider the following points:

- Whether it is appropriate to run concurrent CFS and NHS Body investigations
- Alerting the subject employee
- Suspension of subject employee
- Employees involved as witnesses
- Investigation timescales

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5.5 CFS Investigator is responsible for leading the criminal investigation

5.5.1 Responsibility for the direction of the criminal investigation will lie with the relevant CFS lead Investigator in consultation with the FLO and/or HR lead. Once a criminal investigation is underway, NHS Bodies have a duty to respond to requests for information from CFS promptly, as any unjustified delay may have an adverse affect on the case under the Human Rights Act 1998.

5.6 CFS and NHS Body concurrent investigations

5.6.1 Wherever possible, CFS and NHS Body investigations will run concurrently. This will allow appropriate internal investigations to be progressed to a conclusion prior to the outcome of a more detailed criminal investigation. This agreement is with the caveat that clear and regular communication between CFS and the NHS Body is developed and maintained to ensure that the integrity of evidence is preserved.

5.7 NHS Body internal investigation not initiated at the outset and employee suspect not informed

5.7.1 There are occasions where CFS will request that the NHS Body does not initiate internal processes and that the subject employee is **not** informed of the allegations against them. Primarily, this will be where covert surveillance is being considered or where warrants to search an employee's property (workplace, home address, etc) or bank account(s) are appropriate.

5.8 Subject employee has access to potential evidence

5.8.1 If the subject employee has access to potential evidence, CFS will take the necessary steps to seize it. It is vital that this happens prior to a subject employee being informed of the allegations against them. This will prevent opportunities to conceal, destroy, cover up or tamper with evidence.

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5.9 *Subject employee notified*

5.9.1 Once any potential evidence has been seized, surveillance activity undertaken is concluded or a warrant is executed CFS will update the NHS Body. This will allow the HR lead to inform the subject employee and their representative, under the PIN Management of Employee Conduct Policy, that CFS is carrying out the investigation. The notification will normally take place at an Investigatory Meeting, followed by the issue of a formal letter. It is important to emphasise that the HR lead should not discuss the specifics of the CFS investigation with the subject employee. Attached for consideration is a proposed letter which could be used for this purpose - Appendix B.

5.10 *Suspension of subject employee*

5.10.1 Any decision to suspend an employee is the responsibility of the NHS Body. CFS may seek to make recommendations about the timing of the suspension in the interest of securing the integrity of any potential evidence as outlined in the preceding paragraphs. Where the suspension takes place outside of standard office hours, CFS should be notified as soon as possible thereafter.

5.10.2 Consultation in such circumstances is essential for all parties involved.

5.10.3 As an alternative, it may be appropriate in certain circumstances to consider making arrangements for temporary redeployment to another work area during the course of the investigation.

5.10.4 Where suspension takes place, CFS request that the subject employee is made aware of the CFS criminal investigation as part of the suspension letter given to the staff member by HR.

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5.11 CFS investigation priority

5.11.1 CFS will give priority over other types of investigations to any cases involving employees and if the subject employee is suspended the investigation will be a higher priority, putting all available resources into the investigation to complete it as soon as reasonably practicable. Again, this will depend on the circumstances of the case and the CFS caseload at the time.

5.12 CFS timetable forwarded to FLO/HR lead

5.12.1 CFS will forward a timetable of planned actions and anticipated timescales for completion of their criminal investigation to the FLO and HR lead. This sets out what CFS plan to do over the course of their investigation and provides estimated timescales, which they will make every effort to adhere to. The document should be used by the NHS Body as a guide for the completion of the CFS criminal investigation.

5.12.2 If during the course of the CFS criminal investigation it becomes apparent that the original anticipated timescales are not going to be met a further updated timetable would be forwarded to the FLO and HR lead with appropriate explanations.

5.13 NHS employees to attend CFS witness interviews

5.13.1 As a result of either an internal investigative or disciplinary process, or an investigation undertaken by CFS, NHS Body employees will be involved. This will either be as the employee against whom the allegations are being made, or as witnesses to these allegations.

5.13.2 For any employees who are to be involved as witnesses within any internal processes these should be dealt with in the normal manner.

5.13.3 However, it also has to be recognised that employees may be requested to attend a CFS interview as a witness. It is inevitable that most employees will be interviewed during the course of their working day. Disruption to normal operational effectiveness will be kept to a minimum in consultation with local managers.

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- 5.13.4 On occasions it may be necessary for CFS to liaise with the HR lead and local managers in relation to interviewing employees. Once CFS has identified employees who are connected with the investigation they may enlist the help of the HR lead to identify the names of employees and details of where they are employed.
- 5.13.5 It will also be good practice for HR staff to assist managers in dealing with any questions or anxieties which staff or staff representatives may have in relation to staff who may be required to attend as witnesses. It is hoped that the CFS witness information leaflet will help to inform HR leads and local managers to assist in dealing with any enquiries that they may receive.
- 5.13.6 CFS will inform witnesses of exactly what they require and will carry out quality surveys after witness interviews. It is worth noting that CFS advise employees that they have the right to be accompanied by a friend, colleague or staff representative when being interviewed as a witness. This is based on the understanding that the person accompanying the witness is not connected with the inquiry in any way.

5.14 *CFS witness statements used in criminal, disciplinary and civil recovery cases*

- 5.14.1 In accordance with the provisions of the memorandum of understanding reached between HR and CFS in terms of the sharing of information CFS would seek agreement from all witnesses that the statements taken from them could be used in criminal, disciplinary and civil recovery cases. However, it is important to emphasise that these cannot be made available to NHS Body staff until the criminal case is either concluded or a decision is made not to proceed.
- 5.14.2 CFS will ask all witnesses to sign a letter that outlines how their statement may be used. A copy of this letter is attached - Appendix C.

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5.15 Sufficient evidence to interview subject employee

5.15.1 At this stage a review of all available evidence gathered would be undertaken and a decision made as to whether there is sufficient evidence to justify formally questioning the subject employee under caution. Where there is sufficient evidence a letter inviting the subject employee for interview would be issued by CFS and is attached – Appendix D.

5.15.2 CFS will liaise with HR leads in relation to interviewing a subject employee and inform them of the date of the proposed interview. A letter, inviting the subject employee for interview, will normally be sent direct to their home address.

5.15.3 The letter will advise the subject employee that it is a specific criminal investigation and due to the potentially serious nature of the allegation consideration should be given to consulting with a solicitor to obtain legal advice.

5.16 Advance Warning Notice

5.16.1 An “Advance Warning Notice” (AWN) will be sent in the strictest confidence to the FLO at least three working days prior to the interview of the subject employee. The AWN is issued as this action may generate press, political or clinical/professional interest. (Check)

5.17 Subject employee unwilling to attend interview on a voluntary basis

5.17.1 Where the subject employee is unwilling to attend the interview on a voluntary basis the facts of the case may be presented to the police or COPFS and their assistance sought. This is because CFS has no powers of detention but the police have, and can detain and question individuals for up to 12 hours. However, depending on the nature of the crime, it is likely the matter would be reported direct to the COPFS, or in cases where there is insufficient evidence to the NHS Body.

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5.18 Subject employee interviewed under caution on tape

5.18.1 It is standard practice for CFS to interview a suspected person under tape-recorded conditions. A suspected person is cautioned before an interview commences, the caution informing them that they have the right to silence, i.e. to make no comment on any of the questions put to them. A subject employee is informed that the recording may be used in criminal, disciplinary and civil recovery cases. CFS call this an Interview Under Caution (IUC).

5.19 Insufficient evidence to interview subject employee

5.19.1 In cases where there is insufficient evidence to interview subject employees, they should be notified in writing that the CFS investigation has concluded and the findings will be reported to NHS Body. This notification will be issued by the NHS Body.

5.19.2 At this stage, CFS would submit a final report to the FLO and HR lead which would include all statements and relevant evidence. Whilst it is the case that the work done by CFS up to this point could significantly reduce the work required by the NHS Bodies this does not replace the requirement for the NHS Body as an employer to undertake a fair and thorough investigation of the allegations as is required by employment law.

5.20 Sufficient evidence to report the matter to the COPFS

5.20.1 At this stage a review of all available evidence gathered would be undertaken and a decision made as to whether there is sufficient evidence to justify formally reporting the matter to the COPFS.

5.20.2 Where there is sufficient evidence the subject employee would become an accused person, and the subject of a report to the Procurator Fiscal.

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5.21 Case risk assessed to consider whether an internal investigation should commence

5.21.1 When the CFS criminal investigation is ready to be reported to the COPFS (subject to sufficient evidence having been gathered), the NHS Body will need to consider and make a decision upon the advisability of commencing an internal investigation, in cases which have not run concurrently. In considering this issue the input of CFS, FLO, CLO and COPFS may be necessary. This assessment will take into account the circumstances of the case including value, breach of trust and position of responsibility.

5.22 Internal investigation should commence

5.22.1 If it is the case that an internal investigation should commence, CFS will provide the HR lead with a copy of the productions and a list of relevant witness names including a synopsis of their evidence. The term 'production' is used to denote any piece of physical evidence which is alleged to have some connection with the investigation.

5.23 Internal investigation should not commence

5.23.1 If the case is of high value or a serious breach of trust is involved, CFS may seek agreement with the FLO and HR that initiating an internal investigation presents too high a risk to the criminal prosecution succeeding. In some cases, it may be appropriate to seek advice from the COPFS and if they do not want disciplinary action taken in the interim, NHS Bodies must take note of this in coming to their decision about the progressing of internal processes or otherwise.

5.24 CFS will prepare a Standard Prosecution Report to the COPFS

5.24.1 In the case of criminal prosecution, a Standard Prosecution Report (SPR) will be sent directly to the COPFS by CFS on behalf of the NHS Body. The SPR communicates the facts relevant to the offences and specifies the evidence which proves them. The SPR is presented in a manner which complies with the standards set by the COPFS.

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5.24.2 In cases where the NHS Body has suspended the subject employee on full pay, CFS would ensure that the significance of this is highlighted in the SPR.

5.24.3 Once the SPR is submitted to the COPFS, CFS will inform the FLO and HR lead.

5.25 *Insufficient evidence to report the matter to the COPFS*

5.25.1 In cases where there is insufficient evidence to report the matter to the COPFS, the subject employee should be notified in writing by the NHS Body that the CFS investigation has concluded and the findings will be reported to NHS Body.

5.25.2 At this stage, CFS would submit a final report to the FLO and HR lead which would include all statements and relevant evidence. Whilst it is the case that the work done by CFS up to this point could significantly reduce the work required by the NHS Bodies this does not replace the requirement for the NHS Body as an employer to undertake a fair and thorough investigation of the allegations as is required by employment law.

6. COPFS initiate criminal proceedings

6.1 The COPFS normally informs CFS whether it intends to initiate criminal proceedings within 10 weeks of receipt of an SPR.

6.2 If the COPFS initiate criminal proceedings, CFS, like the police and other specialist reporting agencies, have no control over timescales for cases to be heard at court.

6.3 *Accused person to appear in court*

6.3.1 Where known CFS will advise the FLO, through the advanced warning notice system, of the first court appearance date for the accused person (subject employee).

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6.3.2 The majority of CFS investigations are likely to be dealt summarily (i.e. either in the Justice of the Peace or Sheriff courts) where the hearings are called diets. Normally the accused person receives correspondence, known as a citation, detailing the crimes libelled against them. The accused person is expected to respond to the charges libelled by offering a plea of either 'guilty' or 'not guilty'. The response by the accused can be either appearing personally in court on a date stipulated, having a solicitor represent them on that date or by offering a plea by letter.

6.3.3 If the accused person pleads 'guilty' the court may pass sentence at that time after hearing a summary of facts from the Procurator Fiscal and any mitigation from the accused person, or his/her lawyer. Alternatively and more commonly, sentence may be deferred and dealt with at a later date. If the accused person pleads 'not guilty' the case is adjourned and dates for the intermediate and trial diets are fixed.

6.4 *Accused person to appear in court for trial/sentencing*

6.4.1 Where known CFS will advise the FLO and HR lead, through the advanced warning notice system, of any further court appearance dates for the accused person (subject employee).

6.5 *Proactive publicity*

6.5.1 The SGHD's view (see letter at Appendix E)) is that CFS should proactively publicise cases where the information is in the public domain i.e. where an NHS employee who has committed financial crime against the NHS is convicted criminally.

6.5.2 CFS will issue press releases and contact journalists about all such cases. The relevant NHS Body will be given every opportunity to comment on the wording of the press release before it is issued.

6.5.3 The SGHD's expectation is that NHS Bodies will support proactive publicity around employee and other types of financial crime in order to assist with deterrence. NHS Bodies will consider at a local level the manner in which they wish to deal with this issue.

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6.6 Outcome of criminal proceedings

- 6.6.1 Once the outcome of the criminal case is known CFS will advise the FLO and HR lead accordingly.

7. COPFS decide not to initiate criminal proceedings

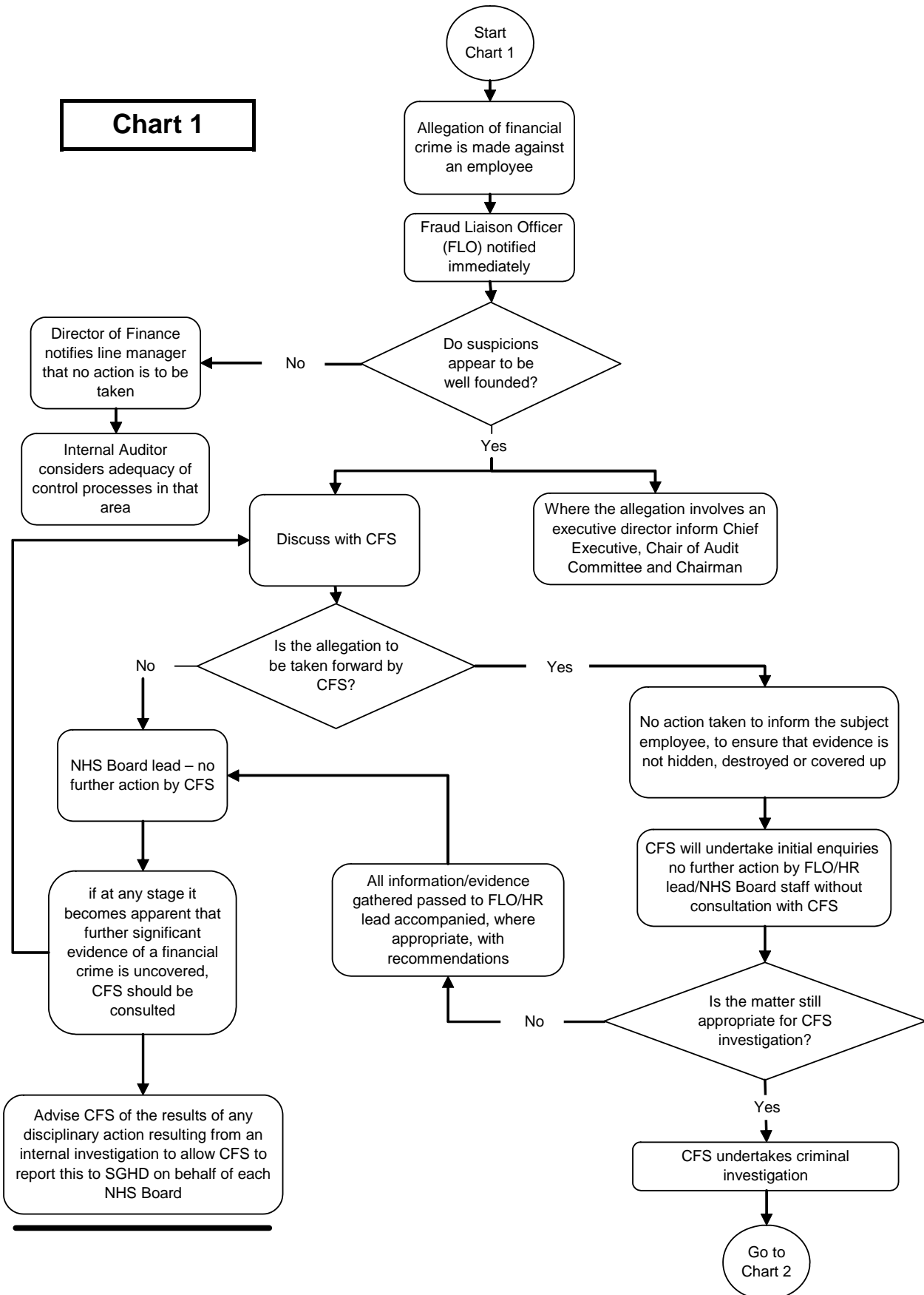
- 7.1 In cases where the COPFS does not initiate criminal proceedings the subject employee should be notified in writing by CFS that the CFS investigation has concluded and the findings reported to NHS Body. CFS would submit a final report to the FLO and HR lead that would include all statements and relevant evidence where appropriate.

8. Other sanctions appropriate

- 8.1 In some circumstances CFS will suggest that the NHS Body pursue other sanctions. If for instance the subject employee is affiliated to a Regulatory Body, such as the Nursing and Midwifery Council (NMC), CFS may recommend that the NHS Body consider referring the matter to the NMC. If a financial loss is incurred, CFS will always recommend the NHS Body to take the necessary steps to ensure the monies are recovered.
- 8.2 In any case where there is disagreement between the NHS Body and CFS over the application of the full range of sanctions, then:
- the NHS Body's Accountable Officer must submit his/her concerns to the SGHD Director of Performance Management & Finance, copying the letter to the CFS Head of Service; or
 - CFS must submit its concerns to the NHS Body's Accountable Officer, copying the letter to the SGHD Director of Performance Management & Finance.

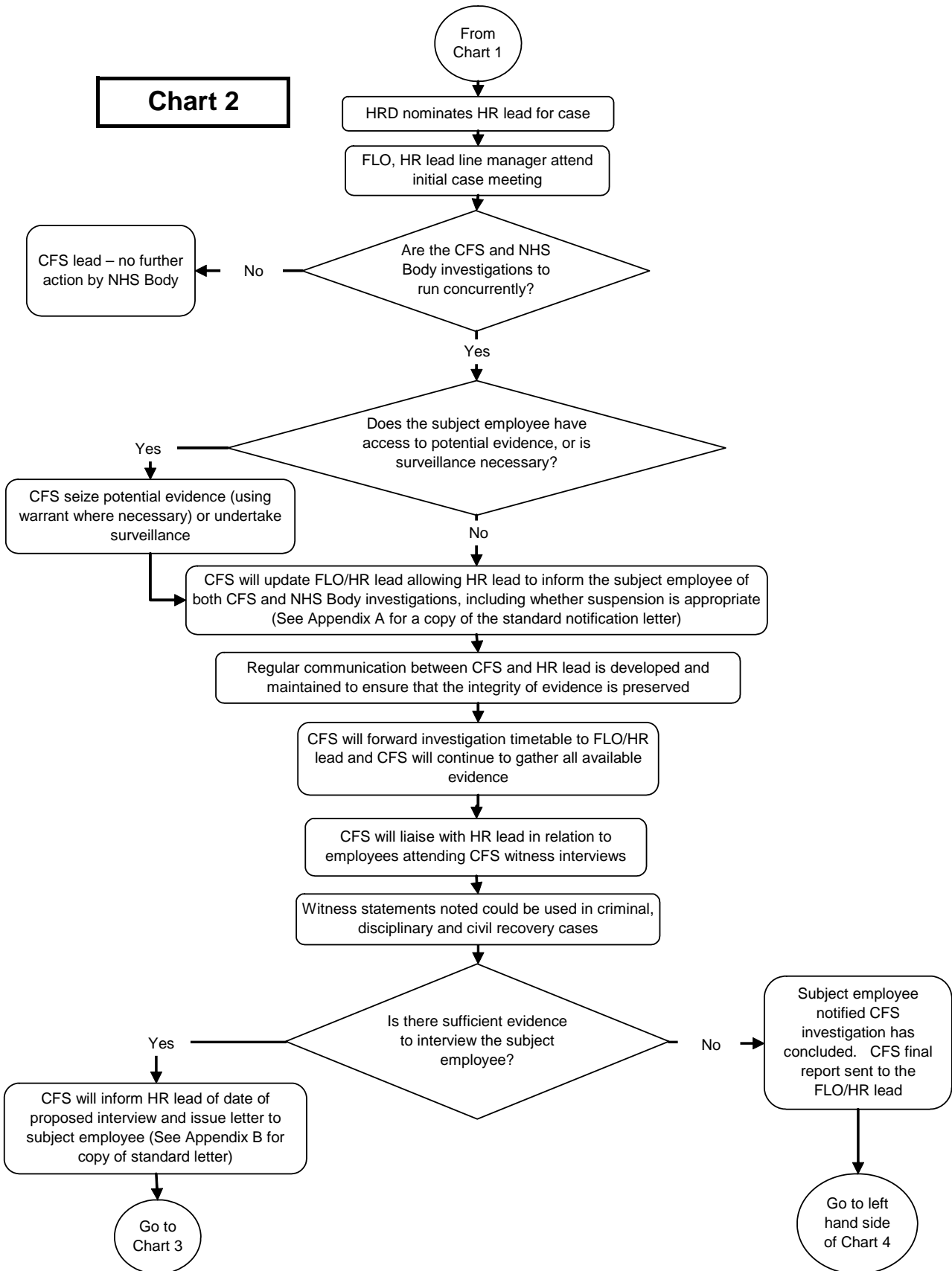
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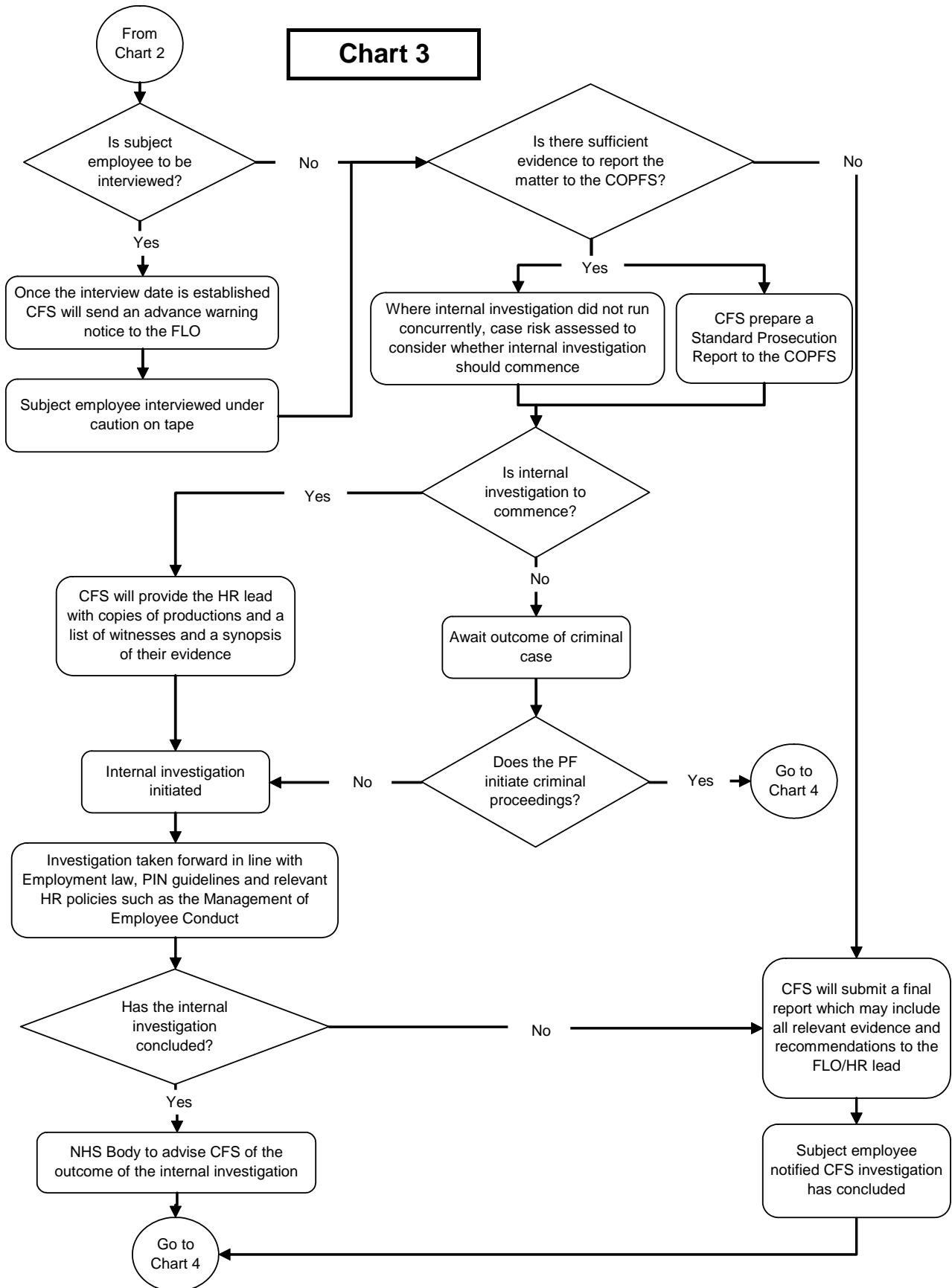
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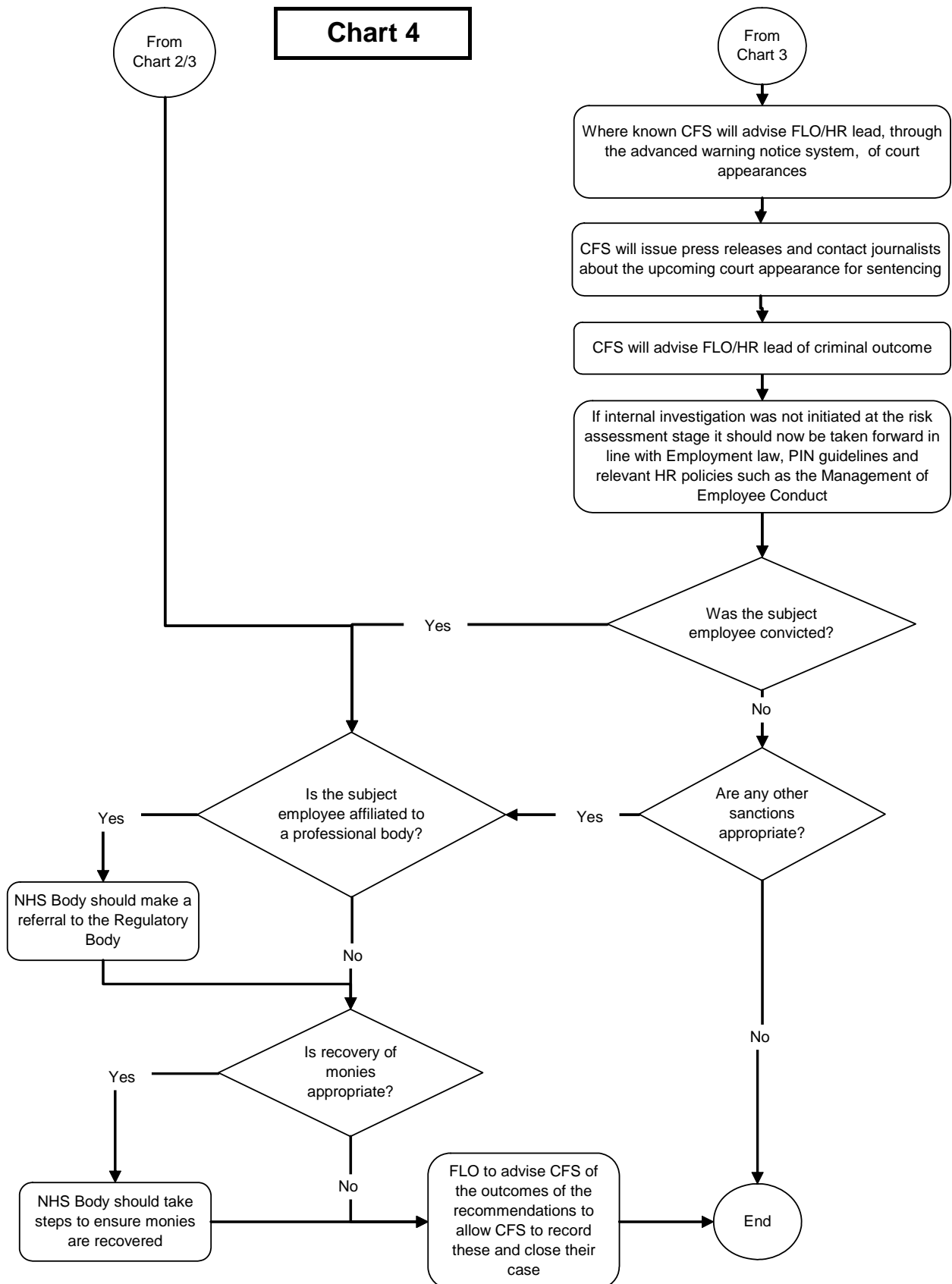
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**Annex A - Appendix B - Procedures for dealing with allegations of financial crime
against employees - Investigatory Meeting Letter**

STRICTLY PRIVATE & CONFIDENTIAL

{Name of employee}
{Address of employee}

Dear {Name of employee}

Management of Employee Conduct - Counter Fraud Services Investigation

Thank you for attending the Investigatory Meeting held under the auspices of the NHS {Body name} Management of Employee Conduct Policy on {Date} in the Meeting Room, {Name of premises}. Present at the meeting was {Names of attendees}. {Name of Union Rep}, UNISON staff representative accompanied you at the meeting.

This Investigatory Meeting was held to {outline minimal details of matter under investigation e.g. inform you that a discrepancy between the amount of money signed for by you and that given to a patient has been identified. An alteration to the associated entry has been made to the patient valuables book.}

As notified to you given the nature of the allegations involved it is the case that the internal investigation will be suspended as the matter has been referred to Counter Fraud Services to conduct an investigation.

It is hoped that the CFS investigation will be concluded as quickly as possible and upon its conclusion a further meeting will be arranged with you in order to advise you of this and the arrangements which are to be implemented in taking this matter forward.

{If the employee is to be suspended details of this should be entered here. Alternatively if they are to be subject to other temporary arrangements then this also should be detailed here.}

The arrangements for you to be interviewed by CFS will be notified to you directly by CFS.

If you do have any questions regarding the content of this letter then please do not hesitate to contact me.

Yours sincerely

CC Union representative

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**Annex A - Appendix C - Procedures for dealing with allegations of financial crime
against employees - Witness Letter**

STRICTLY PRIVATE & CONFIDENTIAL

{Name of employee}
{Address of employee}

Dear {Name of employee}

Witness Information

In the course of an investigation, you may be requested to provide or have already provided a witness statement to NHSScotland Counter Fraud Services. The purpose of this letter is to explain how that statement may be used.

It is possible that your statement may be to relevant bodies as part of any criminal or civil proceedings. If appropriate, it may also be used for disciplinary purposes including regulatory or tribunal inquiries. If the case is referred to the Procurator Fiscal, it may be necessary for you to attend Court to give evidence. This will depend upon a number of factors such as whether a person has been charged with the offence, whether there is sufficient evidence and whether it is in the public interest to proceed to a Court hearing.

If Court proceedings are considered to be appropriate, it does not necessarily mean that you will be asked to attend Court to give evidence. The Defendant may plead guilty or the contents of your written statement may be accepted without the need for you to attend Court. If your attendance at Court becomes necessary, you will be told where and when you are required. When you receive these details you will also receive a detailed information leaflet explaining what will happen at Court and how to claim expenses.

If the case is dealt with as a disciplinary matter, your statement may be used as evidence at a disciplinary or other appropriate hearing.

You may recall you were advised you had the right to be accompanied by a friend, colleague or staff representative when being interviewed as a witness (NHSScotland employees only).

If you elected to be accompanied to this interview, you are reminded that the person accompanying you must not be connected with the inquiry in any way.

If you have any queries concerning the giving of a witness statement, please contact the Investigator whose details are given below.

Investigator taking statement: _____
(Print name)

Telephone Number: _____

By signing below, you are acknowledging that you have been made aware of how your witness statement may be used and of your right to be accompanied when being interviewed as a witness.

Signed: _____

Date: ____/____/____

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**Annex A - Appendix D - Procedures for dealing with allegations of financial crime
against employees - Suspect Interview Letter**

STRICTLY PRIVATE & CONFIDENTIAL

{Name of employee}
{Address of employee}

Dear {Name of employee}

NHS Scotland Counter Fraud Services Investigation

NHS Scotland Counter Fraud Services (CFS) is conducting a specific criminal investigation into an allegation that you {details of allegation}.

I now consider that there are sufficient grounds to justify formally questioning you under caution with regard to this allegation and invite you to attend on a voluntary basis at {name and address of premises} on {day/date} at {time}. Investigators from NHS Scotland Counter Fraud Services will conduct the interview, which will be tape-recorded.

Due to the potentially serious nature of the allegation(s), you should consider consulting with a solicitor prior to the above interview, in order to obtain legal advice.

It is advised that, should you choose to attend the above interview, you would be free to leave at any time before or during formal questioning.

Please contact {name of investigator} on {telephone Number} to confirm if you are able to attend this appointment.

Yours sincerely

Memorandum of Understanding for co-operation between Human Resources Teams of NHSScotland and NHSScotland Counter Fraud Services

Annex A - Appendix E - Procedures for dealing with allegations of financial crime against employees – SGHD Letter Proactive Publicity

Dear Colleague

NHS FRAUD PERPETRATED BY NHS EMPLOYEES THE DETERRENT EFFECT OF PRO-ACTIVE PUBLICITY

The Executive recognises the deterrent effect of publicising cases involving those who have defrauded or attempted to defraud the NHS in Scotland and have tasked NHSScotland Counter Fraud Services (CFS) with creating effective, pro-active publicity around such cases. The aim of such publicity would not be triumphalist but would be used to reinforce the messages that fraud against the NHS will not be tolerated and that those who are found to have defrauded the NHS will be pursued by every means possible.

To date, the CFS' media and communications team has actively liaised with the media on NHS fraud cases involving patients and contractors. With respect to NHS employees, our view is that the CFS should pro-actively publicise cases where the information is in the public domain i.e. where an NHS employee who has committed fraud against the NHS

- is convicted criminally; or
- is subject to an adverse finding by a professional regulatory body; or
- is successfully pursued by an NHSScotland body in the civil courts for recovery of monies defrauded.

Consequently, we intend that the CFS will issue press releases and contact journalists about all such cases in future. The relevant NHS body will be given every opportunity to comment on the wording of the press release before it is issued.

Our expectation is that NHS bodies will support pro-active publicity around employee and other types of fraud in order to assist with deterrence.

Yours sincerely