

NIPEC/16/06
(replacing NIPEC/13/14)



**NORTHERN IRELAND PRACTICE AND EDUCATION
COUNCIL FOR NURSING AND MIDWIFERY**

Fraud Response Policy and Plan

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1. INTRODUCTION

This document is intended to provide direction to those members of staff who find themselves having to deal with suspected cases of theft, fraud or corruption. It gives a framework for a response and advice and information on various aspects and implications of an investigation.

One of the basic principles of public sector organisations is the proper use of public funds. It is therefore important that all those who work in the public sector are aware of the risk of and means of enforcing the rules against fraud and other illegal acts involving dishonesty or damage to property. For simplicity all such offences are hereafter referred to as “fraud”, except where the context indicates otherwise. This document sets out the policy of the Council and response plan for detected or suspected fraud.

This document is not intended to provide direction on prevention of fraud the Council already has procedures in place that reduce the likelihood of fraud occurring. These include Standing Orders, Standing Financial Instructions, documented procedures and a system of internal control and of risk assessment. In addition the Council tries to ensure that a risk (and fraud) awareness culture exists within the Council.

The Council will be supported by a dedicated Fraud Liaison Officer (FLO) and on-going fraud awareness e-learning training packages.

2. PUBLIC SERVICE VALUES

The publication issued in May 2007 by the Department of Finance & Personnel entitled ‘Public Bodies: A guide for Northern Ireland Departments’ sets out public service values for public bodies including non departmental public bodies (NDPBs). Under Annex 5A, of the above, a model code for staff of executive NDPBs covers the following areas:

- | | |
|-----------------------|---|
| Accountability: | Everything done by those who work in the public sector must be able to stand the tests of Ministerial and Assembly scrutiny, public judgements on propriety and professional codes of conduct. |
| Conflict of interest: | Staff should abide by the rules adopted by the public body in relation to private interest and possible conflict with public duties; the disclosure of official information; and political activities.
There should be no misuse of an official position or information acquired in their official duties to further their private interests or those of others. |
| Integrity: | Staff of public bodies should not use their official position to receive, agree to accept or attempt to obtain any payment or other consideration for doing, or not doing anything or showing favour, or disfavour, to any person. They should not receive benefits of any kind from a third party which |

might reasonably be seen to comprise their personal judgement and integrity.

Confidentiality: Staff of public bodies owe a general duty of confidentiality to their employer under civil law. They are therefore required to protect official information held in confidence.

Use of Resources: Staff of public bodies should endeavour to ensure the proper, economical, effective and efficient use of resources.

Data Protection: Staff are required to be aware of their obligations under the Data protection Act (1998) and Freedom of Information Act (2000)

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

3. THE POLICY OF THE COUNCIL

The Council is absolutely committed to maintaining an honest, open and well-intentioned atmosphere within the Council. It is therefore also committed to the elimination of any fraud within the Council, and to the rigorous investigation of any such cases.

The Council wishes to encourage anyone having reasonable suspicions of fraud to report them as soon as possible. Therefore it is also Council policy, which will be rigorously enforced, that no employee will suffer in any way as a result of reporting reasonably held suspicions.

All members of staff can therefore be confident that they will not suffer in any way as a result of reporting reasonably held suspicions of fraud. For these purposes “reasonably held suspicions” shall mean any suspicions other than those which are groundless and/or raised maliciously.

This policy should also be read in conjunction with the NIPEC Whistleblowing policy which provides a framework for providing information and to afford protection and confidentiality to staff including allegations of fraud who supply information.

4. ROLES AND RESPONSIBILITIES

4.1 Individual roles within investigation and reporting phases

- Chief Executive
- Head of Corporate Services
- Fraud Liaison Officer (FLO)
- Audit and Risk Committee
- Counter Fraud and Probity Service (BSO)

Responsibility for investigating fraud has been delegated to the HSC Regional Counter Fraud and Probity Service (CFPS) BSO in conjunction with the FLO.

The CFPS are required to report, in conjunction with the FLO and the Chief Executive, to third parties such as the PSNI or the Comptroller & Auditor General of the NI Audit Office.

The Head of Corporate Services shall consult the Chief Executive at an early stage in cases where the loss may be above the delegated limit or where the incident may lead to adverse publicity.

The FLO shall set out arrangements for the investigation whilst the Head of Corporate Services retains an overview of progress. The Audit and Risk Committee will be provided with details on new cases, progress on existing cases and investigation conclusions on a regular basis.

For contact details of the CFPS and the FLO please refer to appendix A.

4.2 Personnel Agency

Where a member of staff is to be interviewed or disciplined the Head of Corporate Services shall consult and take advice from the Director of HR, BSO.

The Director of HR, BSO shall advise those involved in the investigation in matter of employment law and other procedural matters, such as disciplinary and complaints procedures, as requested.

4.3 Whistleblowing – Nominated Officer

The nominated Officer under the Whistleblowing policy is the Head of Corporate Services. He/she is authorised to receive inquiries of staff confidentially and anonymously. He/she is also authorised to decide whether the matter raised needs to be reported to the Chief Executive, or other officers as appropriate.

4.4 All NIPEC staff

All staff have a duty to protect the assets of the Council, assets include information and goodwill as well as property. Managers may have suspicions reported to them by employees and this manual provides guidance on initial steps to be taken to handling formally to CFPS for further investigation.

5. THE RESPONSE PLAN

5.1 Introduction

The flowcharts in Appendix E &F describe the Council's intended response to a reported suspicion of theft, fraud or bribery (see section 7). The flowcharts are intended to provide a procedural framework to inform and support employees and managers during the initial steps. This will facilitate informed initial decisions, while ensuring that evidence gathered will be admissible in any further criminal or civil action.

Each situation is different; therefore the guidance in the flowcharts will need to be considered carefully in relation to the actual circumstances of each case before action is taken.

Further details on the processes in the flowchart are provided in section 5.2 (Commentary on Flowchart Items).

It should be added that under no circumstances should a member of staff speak or write to representatives of the press, TV, radio, or to another third party about a suspected fraud without the express authority of the Chief Executive. Care needs to be taken to ensure that nothing is done that could give rise to an action for slander or libel.

In some cases, e.g. if a major diversion of funds is suspected, speed of response will be crucial to avoid financial loss and the Head of Corporate Services will, in conjunction with the CFPS and the Chief Executive, initiate actions to mitigate or end loss.

The FLO will liaise with CFPS which will in turn contact any relevant outside bodies e.g. PSNI.

5.2 Commentary on Flowchart Items

CHART 1 - REPORTING FRAUD (Appendix E) from initial suspicion to outcome

5.2.1 Step 1 – Reporting fraud or theft – options for employee

(i) Internal management

As per Appendix A there are a range of officers to whom employees can report suspicions to. Consideration of appropriate persons should be in this order:

- Line manager
- Head of Corporate Services
- Chief Executive
- Chairperson

(ii) Website or Hotline

All HSC employees and members of the public can telephone the Regional HSC Fraud reporting Hotline on 0800 096 33 96 or report through their associated internet site www.reporthealthfraud.hscni.net. These services are managed by the CFPS (BSO) on behalf of the HSC and reports may be made on an anonymous basis. If information is being provided anonymously care should be taken to provide sufficient detail to allow investigations to proceed.

(iii) Whistleblowing

The nominated officer under the Whistleblowing policy (the Head of Corporate Services) is authorised to treat inquiries confidentially and anonymously if so requested by the employee contacting him/her. The nominated officer should review the legitimacy of the registered suspicion and will liaise as necessary with the FLO, and will respond tactfully and

appropriately to concerns raised. There are also a number of other internal and external routes for disclosure, which are highlighted within the Whistleblowing policy.

5.2.2 Step 2 - Agreement on next steps

If suspicions appear well grounded the FLO should be contacted promptly with all relevant information from either the CFPS if reported via the hotline, or other route, or the manager, staff member or Whistleblowing nominated officer if reported internally. The FLO will review the circumstances and provide guidance on steps to be taken by the NIPEC employees in accordance with Appendix E.

5.2.3 Step 3 – Informing Counter Fraud and Probity Service and recording on the regional database

The FLO will contact the Assistant Director of CFPS to provide all details received from NIPEC staff immediately and enter the information into the Regional Fraud database. This will include those dismissed as minor or not requiring a formal fraud investigation e.g. a theft. The database will be updated as and when necessary, detailing actions taken and conclusions reached. The FLO and CFPS have access to this information. The CFPS will, on NIPEC's behalf advise any 3rd parties as deemed necessary e.g. PSNI, NIAO.

Progress reports will be produced by the FLO for the Audit and Risk Committee on a regular basis.

The Head of Corporate Services will ensure that any significant matters i.e. where the loss or the incident may lead to adverse publicity the matter will be reported to the Chief Executive, DHSSPS and the confidential section of the Council meeting as appropriate.

Weaknesses in Internal Controls should be corrected as soon as possible.

5.2.4 Step 4 – Discussion and agreement on the way forward

The FLO will co-ordinate and advise appropriate personnel on the next steps to be taken in conjunction with CFPS

5.2.5 Step 5 - Three possible routes of investigation and outcome:

- (i) No action necessary, the FLO will update database, close case and there will be no formal referral to CFPS for a fraud investigation;
- (ii) Referral to the Assistant Director of CFPS who will appoint a fraud investigator to the case (refer to step 6);
- (iii) Further internal investigation required or in the case of theft reporting to PSNI – this may lead to no action or a CFPS investigation.

Details on each of these outcomes are contained in 5.2.6 below.

5.2.6 Step 6 – Counter Fraud and Probity Service Investigation

Has a criminal act taken place?

In some cases this question may be asked more than once during an investigation. The answer to the question determines if there is to be a fraud investigation (or other criminal investigation). In practice it may not be obvious if a criminal act has taken place. There will be close liaison between CFPS, and the FLO along with other senior NIPEC staff who will agree the best course of action based on all relevant evidence.

Outcomes

- (i) Criminal act has taken place and case is referred to PSNI, see below for further details;
- (ii) No continuation of the criminal investigation but further internal investigation, disciplinary procedures, referral to professional body and/or a civil action may be necessary, see below for further details;
- (iii) No action necessary and CFPS will advise the FLO to formally close the fraud case.

To note that elements of (i) and (ii) above may be taken forward in parallel.

Referral to Outside Agency (ref 5.2.6 (i) above)

After review of evidence CFPS may need to refer the case to an outside body, e.g. PSNI which may result in a lengthy investigation process. The FLO continues to update the Regional Fraud Database, Audit and Risk Committee and the Council based on information provided by CFPS. The outcome from these investigations will either be:

- (i) Criminal Prosecution
- (ii) Case closed – no further action by the outside agency. This may however lead to further internal investigations (refer back to paragraph 5.2.6(ii) for next steps).

If appropriate the FLO will close the case on the Regional Fraud database recording a full description of findings or sentencing and loss and recovery as necessary.

Investigate internally (ref 5.2.6 (ii) above)

If it appears a criminal act has **not** taken place CFPS will hand back the case to the FLO, the next step may involve an internal investigation to review the facts, what if any disciplinary action is needed, what can be done to recover a loss e.g. through a civil action and what may need to be done to improve the internal control framework, if appropriate, to prevent the event from happening again.

Outcomes

It may be appropriate to initiate disciplinary procedures, or refer to a professional body and if this is the case these should only be carried out following the protocols within the NIPEC's Standing Orders or on the advice and guidance from the Director of Human Resources, (BSO) for NIPEC staff issues, or the Directorate of Legal Services, (BSO) where appropriate.

Civil actions should only be considered after receiving advice and support from the Directorate of Legal Services, BSO.

The outcome of these processes will be monitored and recorded by the FLO as appropriate and elements may run in parallel.

5.2.7 Step 7 - Resultant loss reported in financial statements

If a loss has occurred it should be reported in the annual Financial Statements and the Head of Corporate Services shall provide advice to the relevant NIPEC staff on the appropriate actions to be taken to recover the loss taking into account circular HSS (F) 36/98.

This circular sets out delegated limits for approving the write off of losses and special payments. Losses as a result of fraud and theft over £10,000 require the approval of the DHSSPS before they can be written off.

5.2.8 Step 8 - Recording of final outcome by Fraud Liaison Officer (FLO)

When all processes have been concluded, the FLO will record all outcomes on the Regional CFPS database and update the Audit and Risk Committee and the DHSSPS.

5.3 Commentary on Flowchart Items

CHART 2 – Gathering Evidence – (Appendix F) - pre referral to the FLO and CFPS

At time of first report by employee the following steps should be taken by a Manager if a fraudulent act is believed to have taken place. The FLO will assist managers at each stage if further information or support is required.

5.3.1 Step 1 - Physical evidence

If there is any physical evidence this should be seized by employee or manager, if possible. It is essential that this is held securely and a record is kept of the time and place they were taken.

5.3.2 Step 2 - Collection of evidence

If evidence consists of several items, for example many documents, each one should be tagged with a reference number corresponding to the written record.

5.3.3 Step 3-5 – Witnesses

Events should be discussed with the witness if appropriate and a complete record kept of any discussions.

5.3.4 Step 6 - Reporting suspicions

Promptly contact FLO and return all evidence until further advised.

The FLO on behalf of the Head of Corporate Services will keep the Audit and Risk Committee (and others as appropriate) up to date until the case is concluded.

5.3.5 Step 7 - Further Action

Further action will be discussed and agreed with the Head of Corporate Services, FLO, Chief Executive and others as necessary.

6. LEGAL REDRESS AFTER CFPS (BSO) INVESTIGATION

Criminal law may impose sanctions on the defendant for causing loss, while Civil law may assist NIPEC to recover its loss. Guidance will be sought by FLO and CFPS from the Directorate of Legal Services, (BSO) in conjunction with the FLO and CFPS.

7. THE BRIBERY ACT 2010

The Bribery Act 2010 was introduced on 1 July 2011 in Northern Ireland. Previously this was a crime under Common law but now a crime under Criminal law with a stricter definition.

According to the Act a bribe is a financial or other advantage intended to induce or reward the improper performance of a person's function or activity, where benefit could create a conflict between personal interests and business interests.

The basic principle is if the offering/accepting of a simple gift could be seen to influence a decision, then it is classed as potential bribery.

If any employee holds reasonable suspicions of an act of Bribery they should report their suspicions immediately according to the Fraud Response plan and the procedures laid out in Appendices E & F.

8. FURTHER GUIDANCE ON FRAUD

Further guidance on dealing with fraud can be found in the following documents:

Title	Publisher	Contents
Protecting the Public Purse	Audit Commission	Fraud and Corruption prevention, detection, responses.

Fraud and Corruption Audit Manual	Audit Commission	Prevention and audit strategies.
Opportunity Makes a Thief	Audit Commission	Computer abuse survey, including fraud, theft, sabotage, hacking etc.
Write-Off of Losses and Special Payments (HSS (F) 38/93 dated 13 October 1998	HSS Executive	Instructions for dealing with losses and special payments including delegation limits and when to inform HSS Executive, External Auditor or Police.
Revised Fraud Reporting Procedures (HSS(F) 44/2011) Dated 30 June 2005	DHSS&PS	Reporting arrangements for HSC bodies
Memorandum of Understanding (MUO) between NI Public Sector and Police Service of NI, dated 30 October 2006	Public Sector and PSNI	Sets out the basic framework for the working relationship between the PSNI and Public Sector in respect of the investigation and prosecution of fraud cases.
Code of Conduct and Code of Accountability	HSS Executive	Defines the public service values and the basis on which HSS bodies should fulfil the duties and responsibilities confirmed on them.
Code of Practice on openness in the NHS	HSS Executive	Defines the public service values and the basis on which HSS bodies should fulfil the duties and responsibilities confirmed on them.
The Investigation of Fraud in the Public Sector	CIPFA	Guidance for internal auditors on fraud investigation.
Increase in Assembly Reporting Thresholds. DHSS&PS, HSS(F) 01/2006, dated 15 February 2006	DHSS&PS	Advises Accounting Officers of increased thresholds for reporting certain expenditure to the Assembly and new guidance on reporting gifts.
Fraud Forum Best Practice Guidance Internal FRAUD: Management Checklist issued under cover of DAO (DFP) 12/06, dated 12 October 2006.	DFP	The ' <i>Management Checklist</i> ' was agreed by the NICS Fraud Forum and endorsed by the NIAO as a best practice aide-memoire. The purpose is to collate in a short and easily understood format, the key issues an organisation needs to address when a suspected fraud is reported and requires investigation.

Sanctions and Redress Policy (HSC(F) 39/2008), dated 1 July 2008	DHSS&PS	Sets out an approach to be applied throughout the Department, HSC and associated bodies in respect of disciplinary, civil and Criminal proceedings and financial recovery against those persons/organisations who have committed fraud.
Fraud Act 2006, Chapter 35, dated 8 November 2008	Government Act	This Act came into force on the 15 January 2007 and makes provision for, and in connection with, criminal liability for fraud and obtaining services dishonestly.
www.fraudweb.co.uk		A website designed by anti-fraud practitioners for anti-fraud practitioners in the UK Public Sector.
Guidance on Application of Appropriate Sanctions in Cases of Staff Fraud	BSO, Operations Directorate, Counter Fraud Services	Guidelines produced by the Counter Fraud Services to ensure that a consistent approach is adopted by all HSC organisations.
Circular HSC(F) 54/2015, dated 17 November 2015	DHSS&PS	Counter Fraud responsibilities of all HSC and HIFRS employees
Managing Fraud Risk in a Changing Environment	NI Audit Office	A good practice guide
Circular HSC(F) 57/2015, dated 26 November 2015	DHSS&PS	Advising staff of latest NIAO publication (see above)

SIGNED: _____
Chief Executive

DATE: _____

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GLOSSARY

BSO – Business Services Organisation

CFPS – Counter Fraud and Probity Service (BSO)

DHSSPS – Department of Health, Social Services and Public Safety

DFLO – Deputy Fraud Liaison Officer

DLS – Directorate of Legal Services (BSO)

FLO – Fraud Liaison Officer

HCS – Head of Corporate Services

HSC – Health and Social Care

NIAO – Northern Ireland Assembly Office

PACE – Police and Criminal Evidence Order

PSNI – Police Service of Northern Ireland

EXAMPLES OF COMMON METHODS AND TYPES OF FRAUD

- Payment for work not performed
- Forged endorsements
- Altering amounts and details on documents
- Collusive bidding
- Overcharging
- Writing off recoverable assets or debts
- Unauthorised transactions
- Selling information
- Altering stock records
- Cheques made out to false persons
- False persons on payroll
- Unrecorded transactions
- Transactions (expenditure/receipts/deposits) recorded for incorrect sums
- Cash stolen
- Supplies not recorded at all
- False official identification used
- Damaging or destroying documentation
- Using copies of records and receipts
- Using imaging and desktop publishing technology to produce apparent original invoices
- Charging incorrect amounts with surplus amounts stolen
- Delayed terminations from payroll
- Bribes
- Over claiming expenses
- Skimming odd pence and rounding
- Running a private business with official assets
- Using facsimile signatures
- False compensation and insurance claims
- Stealing of discounts
- Selling waste and scrap

CRIMINAL LAW

The following are brief descriptions of some of the criminal offences most relevant in this context. It is not comprehensive, and legal advice should be sought before action is taken.

Theft

The misappropriation of Council assets for gain or otherwise.

Section 1 Theft Order (NI) 1969. A person who dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it.

Fraud

English law does not specifically define fraud, however, Buckley J's description in *Re London and Globe Finance Ltd* encapsulates the two key ingredients: "to defraud is to deprive by deceit" thereby underlining the two essential elements in fraud:

- * Deception or concealment, and
- * Deprivation or loss to the victim

The following are the most frequently used definitions

Article 15 Theft Order

A person who by any deception dishonestly obtains property belonging to another with the intention of depriving the other of it.

Article 16 Theft Order

A person who by any deception dishonestly obtains for himself or another any pecuniary advantage.

This offence is committed where a person obtains employment or increased remuneration, for example by falsely stating qualifications or professional history.

Article 17 Theft Order (False Accounting)

A person who dishonestly with a view to gaining for himself or another or with intent to cause loss to another

(a) destroys, defaces, conceals or falsifies any account or any record of document made or required for any accounting purpose.

or

(b) in furnishing information for any purpose produces or makes use of any account or any such record or document as aforesaid, which is his knowledge, is or may be misleading, false or deception in any material particular.

This is a very wide ranging offence dealing with fraudulent transactions.

In criminal law, every individual element of the statutory wording must be proved beyond reasonable doubt. The essential difference between theft and criminal deception is reflected in the two terms "appropriates" and "by deception obtains".

Under Article 15 for “deception” to be proved it must be established that the proposition on which the victim acted was false and that the defendant knew the proposition to be false. Secondly, this article requires evidence of the obtaining ownership, possession or control of property and includes obtaining for another person or enabling another person to obtain or retain property.

Essentially Article 15 is used in circumstances where ownership of the property concerned has been gained by the accused with the consent of the owner.

Corruption

The strict definition (in the context of the Prevention of Corruption Acts) is: the offering, giving, soliciting or acceptance of an inducement or reward which may influence the action of any person.

In practice corruption means more generally taking decisions for inappropriate reasons eg awarding a contract to a friend, or appointing employees because of political views.

Damage

The Criminal Damage (NI) Order 1977 relates to arson, vandalism or sabotage of property, including computer systems and records.

Any person who without lawful excuse destroys or damages any property belonging to another intending to destroy or damage such property, or being reckless as to whether any such property would be destroyed or damaged.

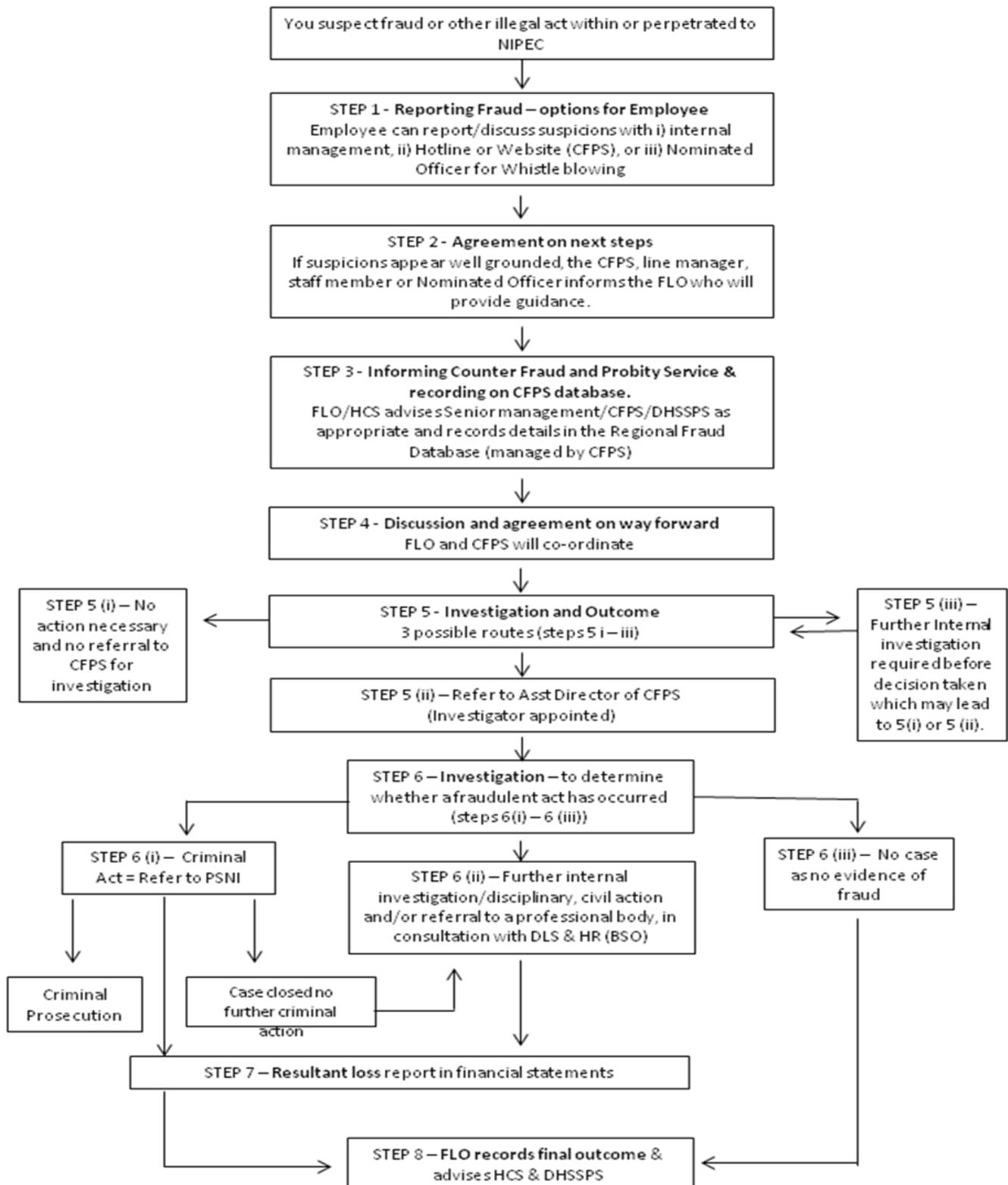
There are many other offences dealing with criminal activity.

Evidence

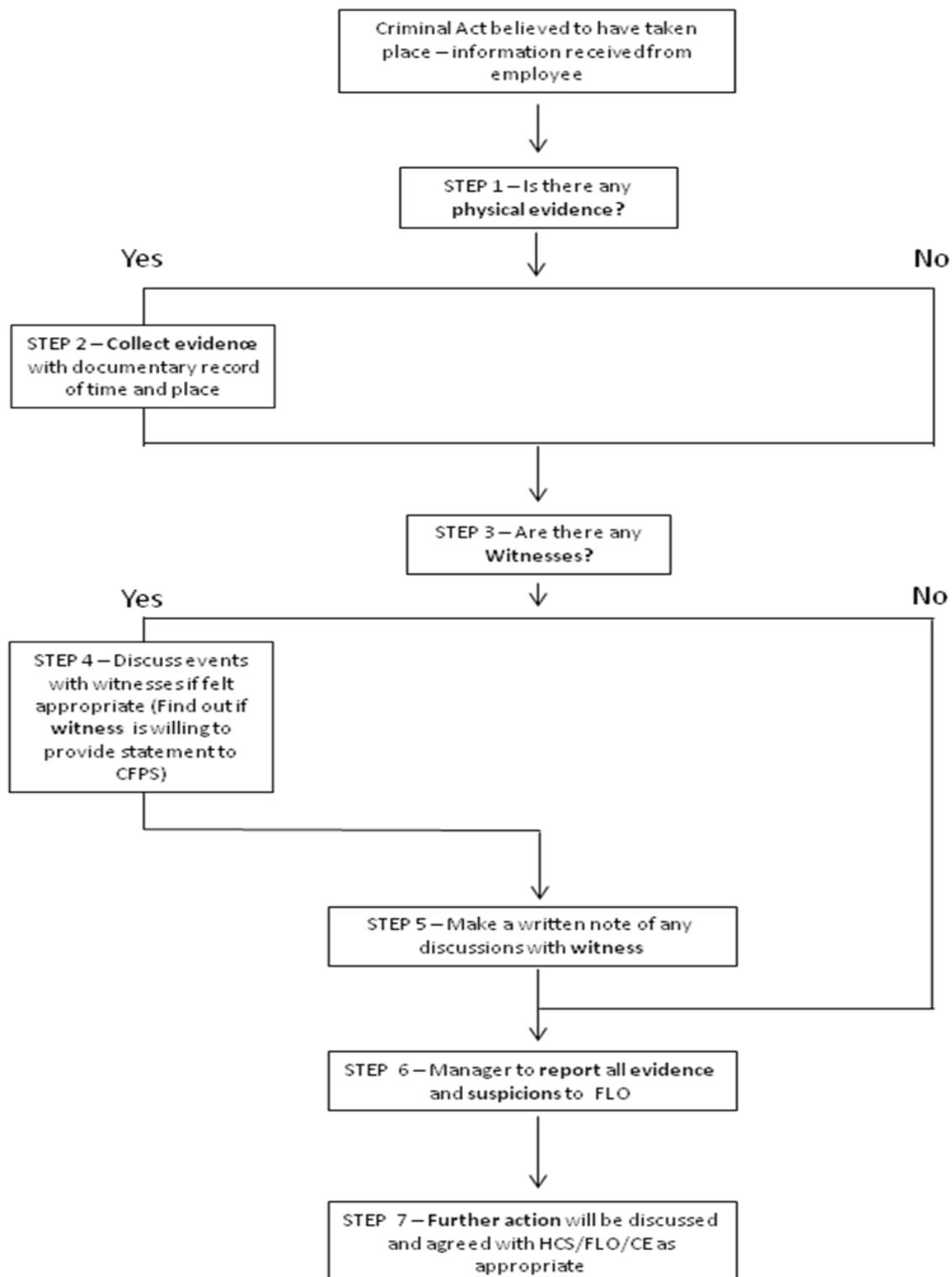
For the purposes of criminal proceedings the admissibility of evidence is governed by the Police and Criminal Evidence Order (NI) 1989. For non-criminal (i.e. civil or disciplinary) proceedings, PACE does not apply, but should nevertheless be regarded as best practice.

Documentary evidence should be properly recorded, it will need to be numbered and include accurate descriptions of when and where it was obtained and by and from whom. In criminal actions evidence on or obtained from electronic media needs a document confirming its accuracy.

REPORTING FRAUD – Overall summary from initial suspicion to outcome (reference section 5.2)



GATHERING EVIDENCE – Initial NIPEC investigation at time of first report by employee
(reference section 5.3)



Fraud Bulletin – CFPS/FB 01/2016

**GUIDANCE ON THE APPLICATION OF APPROPRIATE SANCTIONS IN
CASES OF STAFF FRAUD**

Date of Issue:

5 January 2016

For Action by:

Chief Executives
Fraud Liaison Officers
Directors of HR
Directors of Finance

Summary of Contents:

The attached guidance document has been agreed by Strategic Finance Forum and Human Resource Directors' Forum and sets out general principles which should be considered when dealing with cases of suspected frauds by HSC staff.

The purpose of the document is to ensure that a consistent approach is adopted by all HSC organisations.

As set out Circulars HSC (F) 44/2011 it is a mandatory requirement on all HSC bodies to report all incidents of suspected or actual fraud to CFPS.

Implementation:

Immediate

Related Documents:

HSC (F) 44/2011

Enquiries:

Any enquiries about the contents of this Bulletin should be addressed to:

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Introduction

People who commit fraud make a gain by exposing someone else to a risk of loss. The gain is normally financial but can also involve other property or assets. Fraud offences are diverse and there are an ever increasing number of ways in which they can be committed.

HSC bodies are committed to addressing all cases of fraud that occur within their organisations. However, it is recognised that all cases of fraud are different and will require the application of a sanction/sanctions appropriate to the offence. Fraud offences are criminal acts, although, it is not practical/possible to pursue all cases through criminal proceedings.

This document proposes operational guidance to support the application of the [DHSSPS Sanctions and Redress Policy](#), the purpose of which is to ensure that robust and effective sanctions are applied in respect of those who commit fraud in all areas of health and social care. Its specific objectives as set out in the policy are to:

- “Ensure that fraud is punished through effective sanctions;
- Assist in the selection of the most appropriate sanction;
- Ensure that sanctions are successfully applied;
- Maximise the deterrent effect of successful sanctions;
- Help obtain adequate recompense where necessary; and
- Maintain and generate public confidence in and respect for the Department, HSC and associated bodies by helping to ensure that justice is seen being done.”

This document provides general guidance to assist HSC organisations when considering the most appropriate course of action to address individual cases of suspected/actual fraud involving staff – e.g. disciplinary action, criminal investigation or both.

Roles and Responsibilities

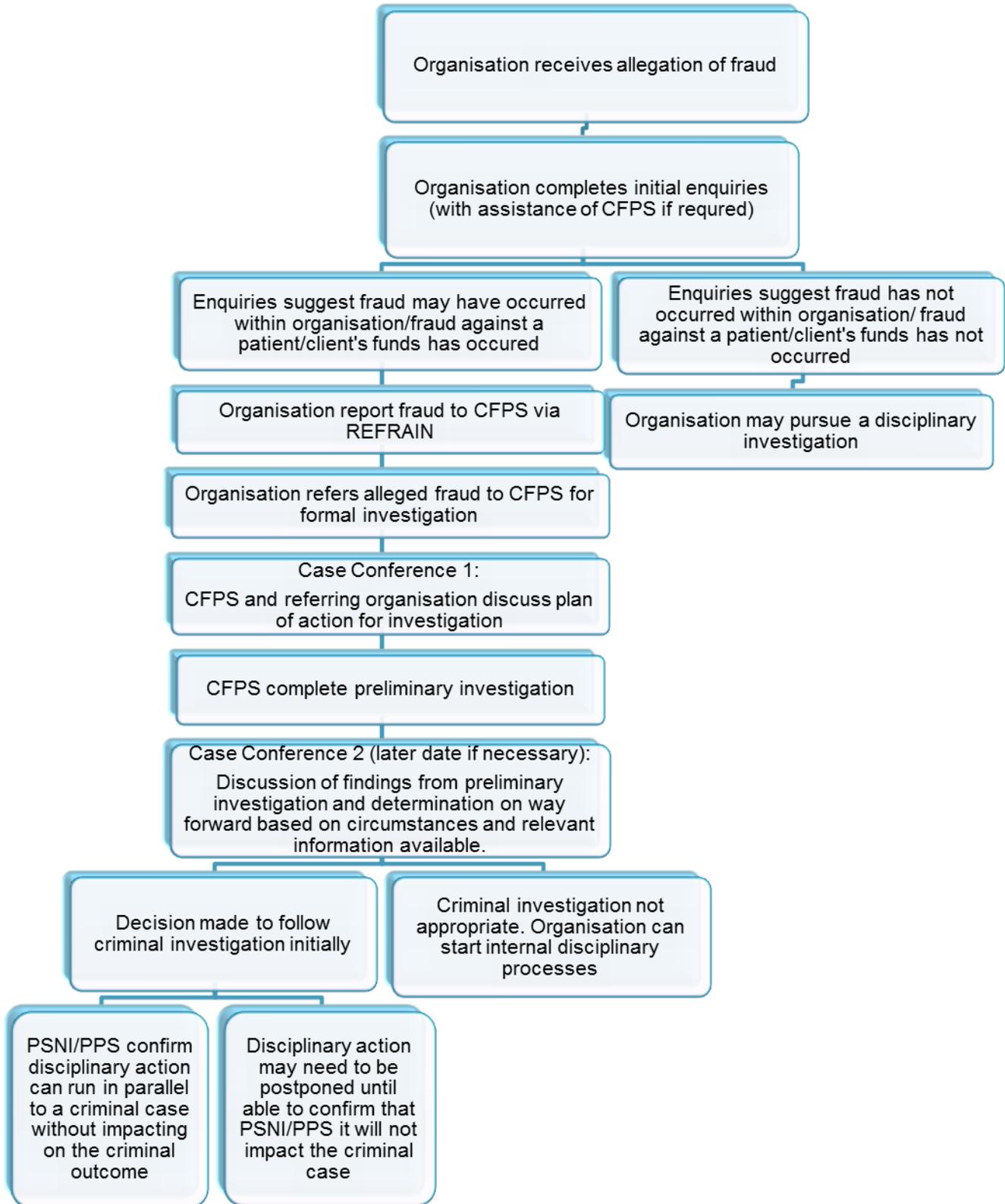
Once a potential fraud is discovered, HSC organisations are required to formally report it to BSO CFPS (for onward transmission to DHSSPS, DFP and NIAO) as set out in Departmental Circular HSC(F) 44/2011. An initial enquiry into the circumstances of the alleged fraud should be carried out by the organisation. If there appears to be substance to the allegation, the fraud should then be referred to BSO CFPS for formal investigation.

Although an initial course of action may be decided upon this decision may require to be amended based on the evolving circumstances of the case. Where it becomes clear that an investigation being carried out by BSO CFPS does not have the potential of being accepted by either the PSNI or Public Prosecution Service (PPS), BSO CFPS will liaise with the referring organisation to make them aware that pursuing their disciplinary action could be more appropriate. Similarly, it may be appropriate for disciplinary action to be pursued whilst criminal proceedings are underway. In addition, in line with current Disciplinary Policies, in cases of gross misconduct, the HSC organisation may summarily dismiss the employee. This will be done in accordance with the relevant policies and procedures. In these cases regular contact with BSO CFPS and the PSNI/PPS is recommended to ensure that the criminal investigation is not negatively affected. Where possible the appropriate investigation report will be made available to the relevant HR department to assist with any disciplinary procedures.

BSO CFPS will work in partnership with the referring organisation to decide the most appropriate course of action taking into account the particular circumstances of each case. A decision needs to be made at an early stage, where possible, as to whether the suspected fraud will be pursued primarily as a criminal investigation or whether it would be more appropriate for the relevant HSC organisation to initiate disciplinary action. It is important to note that disciplinary action may be coupled with a referral to a relevant regulatory body and action to seek financial restitution.

The following diagram shows the actions that should be taken by the referring HSC organisation and BSO CFPS up to the stage when a decision needs to be made, based on all relevant information and circumstances of the case, as to whether disciplinary action or a criminal investigation will take precedence and if a criminal investigation is seen as necessary, the process for deciding when disciplinary action can be initiated.

DECISION PATHWAY



Considering an Appropriate Course of Action – General Principles

Assessing Seriousness

The primary consideration when dealing with fraud offences is the seriousness of the offending behaviour. Therefore, the seriousness of an offence should be a key consideration when choosing an appropriate course of action. When assessing the seriousness of an offence there are three main areas to consider, they are:

- Culpability and Harm
- Aggravating Factors
- Mitigating Factors

1. Culpability and Harm

The offender's intention to cause harm/loss is one of the most important factors to consider. Issues such as the impact of the offence on the victim, harm to persons other than the victim, erosion of public confidence, difference between loss intended and resulting and any potential legitimate entitlement to part or all of the amount obtained need to be considered, where relevant.

2. Aggravating Factors

These include factors that would indicate a higher degree of culpability such as the planning of an offence (rather than an opportunistic action), offenders operating in groups, high level of profit from the offence, an attempt to conceal or dispose of evidence and abuse of position of trust. When assessing aggravating factors, issues such as the number of people involved in an offence, duration of the offence(s), use of another person's identity and the impact of an offence on the victim(s), should be considered.

3. Mitigating factors

Mitigating factors are those that will significantly lower the degree of culpability. These include peripheral involvement, where an offender did not plan to become involved in a fraud but was influenced by others, behaviour not fraudulent from the outset, where an offender originally had entitlement to financial benefit, voluntary cessation of offending, unprompted disclosure of the extent of fraud and voluntary restitution.

Assessing the Characteristics

It is important to consider the characteristics of the fraud which include such aspects as the nature, type, duration and value.

In considering the nature of the alleged fraud it would be important to take into account whether the fraud was widespread and of affected number of locations/areas within HSC. The evaluation should also look at the duration and frequency of the fraud together with the overall potential loss to HSC. The type of fraud, for example, whether there has been an abuse of position of trust or misappropriation of monies may also have a bearing on how to proceed.

Assessing Circumstances

The particular circumstances pertaining to the alleged fraud should also be considered. In many instances the fraud may have been carried out as a result of non-compliance with established procedures. Therefore, how the fraud occurred and the nature of any measures taken to conceal it may be relevant considerations. Another factor that may have bearing would be whether or not there was a previous history of wrong doing.

Assessing Evidence

It is important to recognise that there are two distinct burdens of proof which evidence will have to satisfy namely, for disciplinary action the evidential test is on the balance of probabilities and for criminal proceedings the standard is "beyond all reasonable doubt".

The aspects to which consideration should be given would include the potential delibracy of the actions and the extent of any dishonest intent. It would also be important to apply a public interest test which would take account of the appropriateness and proportionality of any prepared response to the alleged fraud.

Making the Decision

BSO CFPS investigators and the referring organisation will work in partnership, looking at all elements of a fraud before coming to an agreed position on the most appropriate process to follow.

Throughout the investigation process and in particular at case conference 1 or 2 there will be a discussion in relation to the individual circumstances of the case and a written narrative provided to explain why it is perceived that the case should follow a particular route at the outset. However, in more complex cases or cases for which sufficient information may not yet have been gathered by the time of the second case conference,

the decision on what course(s) of action to take will be postponed until a more appropriate time. **It should be noted that this document outlines general guidelines. All cases are different and will require to be considered on their individual merits. There may be over-riding reasons to pursue a particular course of action, and this decision will be reserved to the reporting organisation.**

If the consensus is that a case would not be adopted by the PSNI or pursued by the PPS, then it may be more appropriate to take disciplinary action as a more effective means of dealing with the matter in a timely manner. If the consensus is that a full criminal investigation should proceed, liaison will take place with PSNI/PPS as to whether it is appropriate to continue with disciplinary action. The main reason for not continuing with disciplinary action is that it might potentially prejudice the criminal case.

BSO CFPS Responsibilities

BSO CFPS investigators will work in partnership with the referring organisation throughout the process. They will provide detailed feedback after they have completed the preliminary investigation into the fraud case and work together with the referring organisation to determine which course of action will be the primary focus.

In instances where it is decided that a criminal investigation should proceed and disciplinary action will be postponed, BSO CFPS investigators will in due course provide a detailed evidence pack, in agreed format, to the PSNI. BSO CFPS investigators will also work with the referring organisation to maintain open communication with the PSNI and PPS to ensure that disciplinary action can be commenced at the earliest possible stage.

In cases where a criminal investigation is seen as a necessary action to address a particular fraud, but the PSNI indicate that disciplinary action can take place in parallel to the criminal investigation with no detrimental effect, BSO CFPS will work in partnership with the referring organisation to ensure open communication is maintained. BSO CFPS will provide advice, and where permissible, information that would be helpful to the disciplinary action.

In cases where it is decided that a criminal investigation should not be continued BSO CFPS investigators will meet with the HR representative from the referring organisation to

ensure they have sufficient understanding of the alleged fraud to enable them to proceed with disciplinary action.

HSC Organisations' Responsibilities

The HSC referring organisation will have a number of roles and responsibilities in relation to dealing with the employee who is alleged to have taken part in fraudulent activities. BSO CFPS, the Fraud Liaison Officer (FLO) and the HR department will work in partnership to provide a coherent response to any alleged fraud.

In cases where the participants at the case conference decide that a full criminal investigation is necessary to address the alleged fraud, it is essential that there is a high level of ongoing communication between the HR department, FLO and BSO CFPS, for example to determine when it is appropriate to inform the employee(s) that they are under investigation or to determine an appropriate stage for disciplinary action to proceed. In most cases it will be acceptable to inform the employee under investigation at the outset. However, communication with the employee may be delayed if BSO CFPS are carrying out covert surveillance.

Where an employee who is believed to be involved in a fraudulent activity resigns before the enquiries into the fraud are concluded, the organisation should consider how the circumstances of the resignation may be best drawn to the attention of prospective employers. As part of the action it would be considered best practice that the individual is notified in writing that the circumstances of their resignation/dismissal may be provided in response to a reference request.

Summary

This document provides guidance on general principles for consideration by HSC organisations in cases of alleged fraud involving members of staff. All cases of fraud are individual and often complex and as such there is a responsibility to ensure that the most appropriate action is taken to deal with the matter taking into account all the relevant circumstances of the specific case.