

# FRAUD COUNTS

SPRING 2018

Audit South West - delivering Counter Fraud and Internal Audit services for the NHS in the South West  
Newcourt House, Newcourt Drive, Old Rydon Lane, Exeter, Devon EX2 7JQ

## Bribery Act 2010

### What is bribery?

Bribery is generally defined as giving someone a financial or other advantage to encourage that person to perform their functions or activities improperly or to reward that person for having already done so. The Bribery Act 2010 contains four main offences - examples are shown below.



### BRIBING ANOTHER PERSON

Offering, promising or giving a bribe.

- Offering a manager cash in order to receive additional Annual Leave, which will not be recorded.

### BEING BRIBED

Requesting, agreeing to receive, or accepting a bribe.

- Accepting a bribe from a contractor in order to release tender information of other potential bidders.

### BRIBERY OF A FOREIGN PUBLIC OFFICIAL

- Rare in the NHS, but could occur where there is a business or trading arrangement outside of the UK. Sometimes known as "Facilitation payments"; they are still illegal.

### FAILURE OF A COMMERCIAL ORGANISATION TO PREVENT BRIBERY

- Corporate offence of failing to prevent an employee, agent or subsidiary of the organisation bribing another person. If organisations don't have measures in place to prevent bribery, they can be liable to pay unlimited fines.

### *Editor's Comment*

Bribery and Corruption is rare within the NHS, but it is nonetheless present. The Bribery Act 2010 creates an offence which makes an organisation liable for failing to prevent a person from bribing on its behalf and this applies to the NHS.

The defence to this relies on having adequate procedures in place to try to prevent bribery. This includes policies such as the Standards of Business Conduct, Gifts and Hospitality, Scheme of Delegation and Standing Orders.

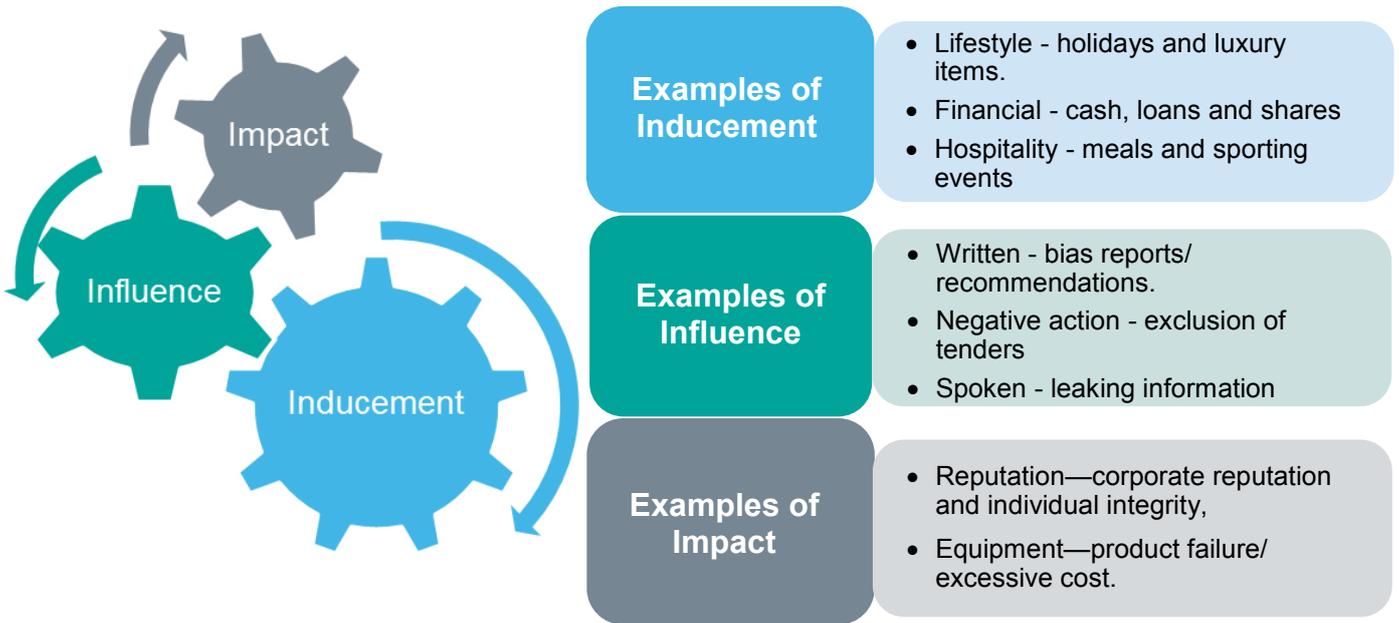
It is everyone's responsibility to be aware of and read their organisation's Counter Fraud, Anti Bribery and Business Conduct policies and processes. If you would like further briefing of why this is important, please contact your Local Counter Fraud Specialist - their details are on the last page.

Suspicions of Fraud and Bribery may be reported anonymously by telephoning the NHS  
Reporting Line in confidence 0800 028 40 60 or [www.reportnhsfraud.nhs.uk](http://www.reportnhsfraud.nhs.uk)

## HELP STOP FRAUD

# What Bribery Looks Like

In all cases of bribery, the following 'critical elements' of corruption will be present:



## Red Flags – Bribery Indicators

When bribery occurs there are likely to be indicators present, which range from observed personal behaviours, to structural weaknesses including policy and process:

Lifestyle	Financial	Behavioural	Structural	Quality
<ul style="list-style-type: none"> <li>• Employees leading an excessive lifestyle.</li> <li>• Vehicles, holidays, properties, jewellery</li> </ul>	<ul style="list-style-type: none"> <li>• Excessive commission payments</li> <li>• Lack of supporting information</li> <li>• Consultation' payments</li> <li>• Cash withdrawals</li> </ul>	<ul style="list-style-type: none"> <li>• Signs of stress e.g. unusual behaviour or changes in personality.</li> <li>• Over-dedication e.g. not taking Annual Leave.</li> </ul>	<ul style="list-style-type: none"> <li>• Poor organisational controls.</li> <li>• Poor record keeping.</li> <li>• Overriding of controls.</li> <li>• Circumventing tendering procedures.</li> </ul>	<ul style="list-style-type: none"> <li>• Product substitution.</li> <li>• Poor quality</li> <li>• Product failure</li> <li>• Excessive stock</li> </ul>

## Bribery Cases

Munir Yakub Patel became the first person convicted under the Bribery Act and was sent to prison for six years for taking bribes while working at Redbridge Magistrates' court in London.

Patel would take £500 from individuals to avoid putting details of a traffic summons on to a court database. Between February 2009 and August 2011 he also gave people advice about how to avoid being summoned to court over traffic penalties.

He admitted one count of bribery but the prosecution believe he earned at least £20,000 by helping 53 offenders.

Patel was sentenced to three years for bribery and six years for misconduct in a public office, which he also admitted at Southwark Crown Court.



[www.google.co.uk](http://www.google.co.uk)

## Bribery Cases



<http://thebriberyact.com>

A UK-based construction and professional services company, Sweett Group PLC, was convicted for the offence of failing to prevent its subsidiary Cyril Sweet International (CSI) from paying bribes on its behalf. This took place from 2012 to 2015 in the United Arab Emirates.

CSI made corrupt payments to a senior board member of Al Ain Ahlia Insurance (AAAI) in order to secure a contract for building a £63 million hotel in Dubai. The bribes were made with the intention of obtaining an advantage in the conduct of business for Sweett.

Having pleaded guilty, Sweett was convicted and sentenced under Section 7 of the Bribery Act 2010 and received a financial penalty totalling £2.25 million. This included £1.4 million fine, a confiscation order of £850,000 and an order for costs to the Serious Fraud Office of £95,000.

Following the conviction, Sweett's share price value fell by 23% and has decided to close its entire Middle Eastern operations.

## Preventative Measures – The Six Principles

These principles help to prevent bribery and provides a defence to the Corporate Liability Section 7 of the Bribery Act 2010:

### Top Level Commitment

Create and maintain a culture in which bribery is not acceptable. This includes a public statement from top-level management that they have a zero-tolerance stance.

### Risk Assessment

The Organisation should have undertaken an assessment to determine the level of risk and how it is managed.

### Proportionate Procedures

Proportionate to the nature, scale and complexity of its activities. Clear, accessible and effectively implemented. Written strategies should describe procedures and their implementation.

### Due Diligence

To establish bribery risks of business associates. Making enquiries, seeking references and inclusion of anti-bribery terms in contracts.

### Communication and Training

Effective communication of associated policies and procedures to staff and suppliers. Effective training of decision-making staff and 'speak up (whistleblowing) procedures.

### Monitoring and Review

Receive feedback on systems through the periodic reviews and external verification. Act upon feedback to make improvements where necessary.

**Please refer to your organisations policies for further detail.**

**You can also contact your Local Counter Fraud Specialist if you have any suspicions or concerns.**

**Fraud in Your  
NHS Workplace?  
Report it!**



If you have any suspicions or concerns,  
You can call us anonymously on

**0800 028 40 60**

POWERED BY CRIMESTOPPERS

Or search 'NHS Fraud' online for more information  
The NHS Counter Fraud Authority leads on fighting fraud, bribery  
and corruption in the NHS and the wider health group



Counter Fraud Authority



# Your Local Counter Fraud Team

Audit South West's Local Counter Fraud Specialists are fully accredited with the University of Portsmouth. We aim to prevent and deter fraud and hold those to account who commit fraud against the NHS.

If you would like to know more about our Counter Fraud work or arrange for your department to receive a Fraud Awareness Presentation, please contact your Local Counter Fraud Specialist (LCFS) below.

## Regional Contact– Counter Fraud Manager

Counter Fraud Manager



**John Micklewright**  
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## Truro Contact - LCFS

Royal Cornwall Hospitals NHS Trust  
Cornwall Partnership NHS Foundation Trust



**Gareth Cottrell**  
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## Plymouth Contact - LCFS

Devon Partnership NHS Trust  
Plymouth Hospitals NHS Trust  
Livewell Southwest



**Tracy Wheeler**  
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## Torquay Contacts - LCFS and CFA

Torbay and South Devon NHS Foundation Trust  
New Devon CCG  
South Devon and Torbay CCG



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Counter Fraud Assistant



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## Exeter Contact - LCFS

Northern Devon Healthcare NHS Trust  
Royal Devon & Exeter NHS Foundation Trust



**Mo Jackson**  
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## Bristol Contact—LCFS

University Hospitals Bristol NHS Foundation Trust  
Weston Area Health NHS Trust  
Bristol, North Somerset and South Gloucestershire  
CCG



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