



NORTHERN IRELAND GUARDIAN AD LITEM AGENCY



FRAUD POLICY

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CONTENTS	PAGE
Fraud Policy	
• Introduction	3
• NIGALA’s Position on Fraud	3
• What is Fraud?	4
• Anti-Fraud Culture	5
• Public Service Values	6
• Fraud Prevention and Detection	6
• Key Responsibilities	8
• Avenues for Reporting Suspicions of Fraud	10
• Recording Incidents of Fraud	10
• Conclusion	11
Appendices	
• Appendix 1 - The Fraud Act	13
• Appendix 2 - Investigation Resources	17
• Appendix 3 - The Law and its Remedies	18
• Appendix 4 - Further Guidance on Fraud & Financial Mismanagement	21



NIGALA FRAUD POLICY

The NIGALA Fraud Policy should be read in conjunction with the NIGALA Fraud Response Plan.

Introduction

NIGALA is committed to the prevention of fraud and the promotion of an anti-fraud culture. One of the basic principles of NIGALA, as in all HSC organisations, is to safeguard the public funds for which it is responsible. It is therefore important that all staff are aware of the risk of fraud, corruption, theft, and other illegal acts involving dishonesty.

The procedures to be followed in the event of fraud being detected or suspected are detailed in our **Fraud Response Plan**. This policy should be read in conjunction with the following documents:-

- ♣ HSC Code of Conduct for Employees
- ♣ Fraud Response Plan
- ♣ Whistleblowing Policy

NIGALA's Position on Fraud

NIGALA is committed to maintaining an anti-fraud culture in the organisation where all staff are aware of the risk of fraud, what constitutes a fraud and the procedures for reporting it. NIGALA operates a “**zero tolerance**” approach to fraud and requires staff to act honestly and with integrity.

Staff are encouraged to report all suspicions of fraud; they are assured that any information which they provide will be treated with confidentiality (although disclosure may be required if a case goes

to court). Every case of attempted, suspected or proven fraud will be thoroughly investigated and where appropriate, referred to the Police Service of Northern Ireland (PSNI) at the earliest juncture. NIGALA will take civil, criminal and/or disciplinary action in all cases where it is appropriate to do so.

(See Fraud Response Plan)

NIGALA has adopted the HSC Counter Fraud Strategy as the basis for its anti-fraud activities. The key elements of this Strategy are as follows:

- The creation of an anti-fraud culture
- Maximum deterrence of fraud
- Successful prevention of fraud
- Prompt detection of fraud
- Professional investigation of detected fraud
- Effective sanctions, including appropriate legal action against anyone found guilty of committing fraud
- Effective methods for seeking recovery of money defrauded or imposition of other legal remedies

What is Fraud?

The Fraud Act

The Fraud Act 2006 represents a new way of investigating fraud against Health and Social Care. It is no longer necessary to prove a person has been deceived. The focus is now on the dishonest behaviour of the suspect, and their intent to make a gain for themselves or another or cause a loss to another.

Definitions

The Fraud Act 2006 is an Act of Parliament of the United Kingdom affecting England, Wales and Northern Ireland and was introduced on 15th January 2007. Under the Act, fraud is a specific offence in Law. The Fraud Act 2006 supplements the Theft Act (Northern Ireland) 1969 and the

Theft (Northern Ireland) Order 1978. Fraud is used to describe acts such as deception, bribery, forgery, extortion, corruption, theft, conspiracy, embezzlement, misappropriation, false representation, concealment of material facts and collusion.

The Act gives a statutory definition of the criminal offence of fraud, defining it in three classes

- fraud by false representation
- fraud by failing to disclose information
- fraud by abuse of position.

The Act provides that a person found guilty of fraud is liable to a fine or imprisonment of up to six months on summary conviction, or a fine or imprisonment of up to ten years on conviction of indictment. [\(See Appendix 1 for full detail\)](#)

For practical purposes, fraud may be considered to be the use of deception with the intention of obtaining an advantage, avoiding an obligation or causing loss to another party, whether for period gain or for the benefit of a third party. The criminal act is the attempt to deceive and attempted fraud is therefore treated as seriously as accomplished fraud.

Anti-Fraud Culture

NIGALA is absolutely committed to maintaining an ethical work environment characterised by the honesty and integrity of all employees who work together to develop an anti-fraud culture. It is therefore committed to eliminating any fraud within the Agency, and to the rigorous investigation of any such cases. Where any acts of fraud or corruption are proven, the NIGALA will ensure that the culprits are appropriately dealt with, and will also take all appropriate steps to recover any losses in full.

The NIGALA Board wishes to advise that it is the responsibility of all staff to report any reasonable suspicions of fraud or corruption. It is also the Board's policy that an employee should not suffer detriment as a result of reporting reasonably held suspicions.

Public Service Values

The Codes of Conduct for the NHS/HSC Bodies sets out key public service values. They state that high standards of corporate and personal conduct have been a requirement since the inception of the NHS. All staff should be aware of, and act in accordance with, these values.

These values are summarized as:-

Accountability: Everything done by those who work in the HSC must be able to stand the tests of parliamentary scrutiny, public judgements on propriety and professional codes of conduct.

Probity: Absolute honesty and integrity should be exercised in dealing with the assets of the HSC: integrity should be the hallmark of all personal conduct indecisions affecting patients, clients, staff, suppliers, and in the use of information acquired in the course of HPSS duties.

Openness: There should be sufficient openness about HSC activities to promote confidence between the HPSS body and its staff, patients, clients and the public.

Fraud Prevention and Detection

NIGALA supports the role of the HSC Counter Fraud and Probity Services (CFPS). They are staffed by a team of fully qualified, accredited counter fraud specialists who have a remit of countering fraud across Health and Social Care in Northern Ireland. The CFPS investigators are authorised in law to employ a wide range of investigative tools and techniques in order to obtain the necessary evidence to progress each case. Investigations can involve:-

- detailed analysis of all relevant source documentation;
- taking of witness statements;

- where appropriate, conducting authorised directed surveillance (as governed by the Regulation of Investigatory Powers Act 2000);
- data matches through the Northern Ireland Audit Office (NIAO) National Fraud Initiative
- sharing information with and by other public sector bodies through Data Sharing Agreements and Memoranda of Understanding.

The CFPS aim is to prevent and detect fraud against Health and Social Care and we will fulfil this for NIGALA by:

1. advising on NIGALA concerns;
2. carrying out preliminary investigations;
3. undertaking full fraud investigations using a wide range of investigative tools;
4. reporting findings to NIGALA;
5. recommending on NIGALA options in relation to findings;
6. preparing an evidential pack for PSNI (Police) where appropriate;
7. liaising with PSNI in the furtherance of cases adopted by that organisation;
8. liaising with PPS where necessary;
9. giving evidence in Court as required;
10. highlighting and advising NIGALA in relation to any systems weaknesses identified during the course of any investigation.

The CFPS investigation process will gather evidence which will help NIGALA to determine which appropriate sanctions should be applied in each case. Where fraud is proven any or all of the following sanctions will be considered. In many instances parallel sanctions, as defined below, may be taken.

- **Criminal** – where there is evidence that fraud has occurred the case may be referred to the PSNI (Police) and Public Prosecution Service to consider prosecution.
- **Civil** – action will be taken to recover monies/assets obtained through fraud.

- **Disciplinary** – procedures are in place within HSC organisations for either the employer or relevant professional regulatory body to consider appropriate action.

Key Responsibilities

Chief Executive

The Chief Executive is the Accounting Officer in NIGALA and is responsible for establishing and maintaining a sound system of internal control that supports the achievement of office policies, aims and objectives.

Corporate Services Manager

The Corporate Services Manager is the designated Fraud Officer (Fraud Manager) for NIGALA. They have overall responsibility for managing the risk of fraud within NIGALA and work in conjunction with Counter Fraud & Probity Services on all matters relating to fraud. They liaise with the Director of Human Resources (BSO) on disciplinary matters emanating from any fraud cases and seek legal advice from the Chief Legal Adviser (DLS) as required.

Fraud Liaison Officer

The Fraud Liaison Officer will assist the Fraud Officer in promoting a zero tolerance toward fraud within NIGALA. They shall liaise with Counter Fraud and Probity Services in the planning, organizing and delivery of Fraud Awareness training and participate in discussions and training sessions with other FLOs and CFPS staff sharing information and knowledge.

Counter Fraud and Probity Services (CFPS)

The Counter Fraud and Probity Services delivers a specialist fraud investigative service for all of the HSC in Northern Ireland. They are available to advise NIGALA on all situations relating to fraudulent activity and undertake investigations as required. All suspected and actual frauds should be reported to CFPS.

NIGALA Staff

All NIGALA staff must have, and be seen to have, the highest ethical and personal standards and be honest and objective in their work. They must be aware of and work in accordance with the Public Service Values. Every member of staff is responsible for acting with propriety in the use of official resources and conducting themselves in accordance with the seven principles of public life set out in the first report of the Nolan Committee "Standards in Public Life". The seven principles of public life are as follows:-

1. **Selflessness:** Holders of public office should act solely in terms of the public interest.
2. **Integrity:** Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.
3. **Objectivity:** Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.
4. **Accountability:** Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.
5. **Openness:** Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.
6. **Honesty:** Holders of public office should be truthful.
7. **Leadership:** Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

All staff should consider their personal and business activities and whether these may be considered a conflict with their duty to the office. Any potential conflict of interest should

reported to the Chief Executive for inclusion in the Register of Interests. All NIGALA staff will be asked annually declare any private interests.

Avenues for Reporting Suspicions of Fraud

Staff should not attempt to investigate any suspicions of fraud themselves. Always report any suspicions! There are various avenues available by which staff can raise suspicions of fraud.

1. Speak to your Line Manager and highlight any concerns.
2. Speak to the Fraud Officer and highlight any concerns.
3. Speak to the Chief Executive and highlight any concerns.
4. Call the HSC Fraud Hotline and highlight any concerns.



Fraud Hotline (CFPS)	08000 96 33 96	
Fraud Liaison Officer (NIGALA)	02890 31 65 62	Ann Andrew
Fraud Officer (NIGALA)	02890 31 65 55	Declan McAllister

All matters will be dealt with in confidence and in strict accordance with the terms of the Public Interest Disclosure (Northern Ireland) Order 1998.

Recording Incidents of Fraud

NIGALA will record all incidents of Fraud and suspected Fraud onto the **Datix** system. Datix is a risk management software system used by NIGALA to manage all incidents. [\(Please see Fraud Response Plan for further detail\).](#)

NIGALA must report all incidents of Fraud and suspected Fraud to the DHSSPS by an annual Fraud Return.

Conclusion

Whilst the individual circumstances surrounding each fraud will vary, NIGALA takes all cases seriously and adopts a zero-tolerance approach. All reported suspicions will be fully investigated and robust action will be taken where fraud can be proven.

The DO's and DO NOT's of FRAUD

- **DO** report any suspicions to your Line Manager/Fraud Officer/Chief Executive.
- **DO** keep a copy of any documentation that may arouse suspicions (solely for use in any subsequent investigations).
- **DO NOT** confront an individual with your suspicions.
- **DO NOT** discuss the matter with anyone else.

Fraud Response Plan

The NIGALA has established guidelines on how NIGALA staff and others should report suspicions or allegations of fraud and how the NIGALA will handle them. Please refer to the **NIGALA Fraud Response Plan**.

APPENDICES

APPENDIX 1

The Fraud Act which are particularly relevant to healthcare investigations. For more detailed information please visit <http://www.legislation.gov.uk/ukpga/2006/35/contents>

Fraud

(1) A person is guilty of fraud if he is in breach of any of the sections listed in subsection two which provide for different ways of committing the offence.

(2) The sections are—

- (a) fraud by false representation (section 2),
- (b) fraud by failing to disclose information (section 3), and
- (c) fraud by abuse of position (section 4).

(3) A person who is guilty of fraud is liable –

- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum (or to both);
- (b) on conviction on indictment, to imprisonment for a term not exceeding 10 years or to a fine (or to both).

Fraud by false representation

(1) A person is in breach of this section if he –

- (a) dishonestly makes a false representation, and
- (b) intends, by making the representation—
 - (i) to make a gain for himself or another, or
 - (ii) to cause loss to another or to expose another to a risk of loss.

(2) A representation is false if –

- (a) it is untrue or misleading, and
- (b) the person making it knows that it is, or might be, untrue or misleading.

(3) “Representation” means any representation as to fact or law, including a representation as to the state of mind of –

- (a) the person making the representation, or
- (b) any other person.

(4) A representation may be express or implied.

(5) For the purposes of this section a representation may be regarded as made if it (or anything implying it) is submitted in any form to any system or device designed to receive, convey or respond to communications (with or without human intervention).

Fraud by failing to disclose information

(1) A person is in breach of this section if he –

(a) dishonestly fails to disclose to another person information which he is under a legal duty to disclose, and

(b) intends, by failing to disclose the information –

(i) to make a gain for himself or another, or

(ii) to cause loss to another or to expose another to a risk of loss.

Fraud by abuse of position

(1) A person is in breach of this section if he—

(a) occupies a position in which he is expected to safeguard, or not to act against, the financial interests of another person,

(b) dishonestly abuses that position, and

(c) intends, by means of the abuse of that position—

(i) to make a gain for himself or another, or

(ii) to cause loss to another or to expose another to a risk of loss.

(2) A person may be regarded as having abused his position even though his conduct consisted of an omission rather than an act.

Obtaining services dishonestly

Section 11 of the Act makes it a statutory offence to obtain services dishonestly; meaning that services which were to be paid for were obtained with the knowledge or intention that no payment would be made. A person found guilty of this will be liable to a fine or imprisonment for up to six months on summary conviction (twelve months in England and Wales), or a fine or imprisonment for up to five years on conviction on indictment.

(1) A person is guilty of an offence under this section if he obtains services for himself or another –

(a) by a dishonest act, and

(b) in breach of subsection (2).

- (2) A person obtains services in breach of this subsection if –
- (a) they are made available on the basis that payment has been, is being or will be made for or in respect of them,
 - (b) he obtains them without any payment having been made for or in respect of them or without payment having been made in full, and
 - (c) when he obtains them, he knows –
 - (i) that they are being made available on the basis described in paragraph (a), or
 - (ii) that they might be,but intends that payment will not be made, or will not be made in full.
- (3) A person guilty of an offence under this section is liable –
- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or to both);
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine (or to both).
- (4) Subsection (3)(a) applies in relation to Northern Ireland as if the reference to 12 months were a reference to 6 months.

Possession etc. of articles for use in fraud

- (1) A person is guilty of an offence if he has in his possession or under his control any article for use in the course of or in connection with any fraud.
- (2) A person guilty of an offence under this section is liable –
- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or to both);
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine (or to both).
- (3) Subsection (2)(a) applies in relation to Northern Ireland as if the reference to 12 months were a reference to 6 months.

Making or supplying articles for use in frauds

- (1) A person is guilty of an offence if he makes, adapts, supplies or offers to supply any article –
- (a) knowing that it is designed or adapted for use in the course of or in connection with fraud, or
 - (b) intending it to be used to commit, or assist in the commission of, fraud.

(2) A person guilty of an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or to both);

(b) on conviction on indictment, to imprisonment for a term not exceeding 10 years or to a fine (or to both).

(3) Subsection (2)(a) applies in relation to Northern Ireland as if the reference to 12 months were a reference to 6 months.

APPENDIX 2 - INVESTIGATION RESOURCES

After completion of an initial fact-finding investigation in accordance with procedures given in the flowchart, the following options are available to NIGALA.

ACTION	ADVANTAGES	DISADVANTAGES
Ignore	No incremental cost	Fails to allay suspicions deter or recover NIGALA assets. Possible adverse publicity if suspicion eventually becomes public
Use spare capacity within NIGALA to investigate	No incremental cost Entirely controlled by NIGALA	Lack of independence Lack of knowledge of PACE May delay involving Police until it is too late
Use Internal Audit to investigate	Some knowledge of PACE Cost can be controlled by NIGALA	Cost
Use External Audit to investigate	Independent Some knowledge of PACE	Cost Further from the control of NIGALA Possibly limited knowledge of evidence gathering processes and insufficient investigative expertise
Use an external specialist consultancy to investigate	Independent Knowledgeable on the rules of evidence and evidence gathering processes, together with investigative expertise Can be controlled by NIGALA	Cost Lack of existing knowledge of NIGALA
Call the Police	No incremental cost Independent Access to large resources Powers extend beyond the confines of NIGALA	Little control over investigation Goal tends to be gathering evidence for conviction, may differ from NIGALA objectives Good knowledge of PACE Greater possibility of publicity Difficult to revoke

APPENDIX 3 - THE LAW AND ITS REMEDIES

Criminal law may impose sanctions on the defendant for causing loss, while Civil law may assist NIGALA to recover its loss.

In Civil law, the method of concealment (in the case of fraud) is unlikely to be a key factor in the value of compensation or the drafting of the statement of claim.

In Criminal law, the nature of the deceit is highly relevant in the framing of charges, but the law is not primarily concerned with restitution or recovery of the proceeds of fraud or theft - although there are statutory powers to award compensation and to order restitution or forfeiture in some circumstances.

CIVIL LAW REMEDIES

Monies had and received: The claim will refer to funds of the plaintiff, which have been 'had and received' by the defendant at the plaintiff's expense - and will seek their recovery.

Damages for deceit: A defendant may become liable in *tort* to the plaintiff for damages arising out of the act, and if the plaintiff can establish this liability, there is entitlement to be put back into the position that would have occurred if the tortious act had not been committed. If successful, this claim may result in the award of damages beyond mere recovery of assets stolen.

Interest: The plaintiff may be entitled to interest on the amount lost, and there are claims for interest under court rules and statute.

Tracing: Tracing is an equitable remedy for the recovery of assets. Its meaning is that the trail by which assets have been removed must be followed via the hands they pass through after leaving control of the plaintiff.

CRIMINAL LAW DEFINITIONS

Theft and obtaining property by deception - Sections (Ss.) 1 & 15 of the Theft Act 1968

The misappropriation of NIGALA assets for gain or otherwise. This includes fraud, when theft is disguised by falsification of records.

Ss.1 a person who dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it.

Ss.15 a person who by any deception dishonestly obtains property belonging to another with the intention of depriving the other of it.

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

Under Ss.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 section does not require an 'appropriation' of property, but merely to obtain ownership, possession or control.

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

Fraud (see Fraud Report 1995/96)

English law does not define fraud, however, Buckley J's description in *Re London and Globe Finance Ltd* encapsulates the two main 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

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 - For example, awarding a contract to a friend, or accepting payment for secretive information.

Damage: Relates to arson, vandalism or sabotage of property, including computer systems and records.

Ss(1) Criminal Damage Act 1971. 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.

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

Interview: Before any interview commences with a person suspected of a criminal offence, there are requirements to be fulfilled under PACE, failure to comply with PACE means that anything said by the suspect during the interview will not be admissible in a court of law.

APPENDIX 4 - FURTHER GUIDANCE ON FRAUD AND FINANCIAL MISMANAGEMENT

TITLE	PUBLISHER	CONTENTS
Protecting The Public Purse Audit Manual	Audit Commission http://www.audit-commission.gov.uk/	Fraud & corruption prevention, detection, responses
Fraud And Corruption	Audit Commission http://www.audit-commission.gov.uk/	Prevention & audit strategies
Opportunity Makes A Thief	Audit Commission http://www.audit-commission.gov.uk/	Computer abuse survey, including fraud, theft, sabotage hacking, etc
Losses & Special Payments	DHSSPS http://www.dhsspsni.gov.uk/	Instructions for dealing with losses & special payments including delegation limits and when to inform NHS Executive, External Auditor or Police
Code Of Conduct And Code Of Accountability	DHSSPS http://www.dhsspsni.gov.uk/	Defines the public service values and the basis on which NHS bodies should fulfil their duties and responsibilities